

DEPARTMENT OF DEFENSE ACTIONS CONCERNING
VOLUNTARY EDUCATION PROGRAMS

HEARING
BEFORE THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS
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NOVEMBER 29, 2016

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DEPARTMENT OF DEFENSE ACTIONS CONCERNING VOLUNTARY EDUCATION PROGRAMS

TUESDAY, NOVEMBER 29, 2016

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m. in Room SD-G50, Dirksen Senate Office Building, Senator John McCain (chairman) presiding.

Committee members present: Senators McCain, Wicker, Ayotte, Fischer, Cotton, Rounds, Ernst, Tillis, Sullivan, Cruz, Reed, Nelson, McCaskill, Manchin, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, and Heinrich.

OPENING STATEMENT OF SENATOR JOHN MCCAIN, CHAIRMAN

Chairman MCCAIN. Good morning. Committee meets this morning to review the Department of Defense decision last year to put the University of Phoenix on probation, pending possible termination, with respect to its participation in its Voluntary Education Tuition Assistance Program, a program to allow Active Duty or members of the military to receive a quality education.

I welcome our witnesses and appreciate their appearance before the committee: an old friend, Peter Levine, who is Acting Under Secretary of Defense for Personnel and Readiness; Stephanie Barna, Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness; and Dawn Bilodeau, Chief of Voluntary Education for the Department of Defense.

This hearing is about the how the Department of Defense, consistent with the Obama administration's ideological hostility to for-profit universities, under pressure from at least one Member of Congress, and having performed very little due diligence of its own, placed on probation a reputable and fully accredited for-profit university that provides valuable educational programs to thousands of military servicemembers. This probation decision, which constitutes nothing short of a gross abuse of power, resulted from a process that was fundamentally unfair and not supported by sufficient evidence. Indeed, the alleged violations that led to the probation decision were based on shifting guidance as well as reasons not substantially different than alleged violations by 15 other universities.

While the probation decision was ultimately reversed, it was not before significant damage had already been done. The decision im-

mediately impeded the University's ability to provide educational programs to the military community for the duration of the program. Countless veterans and Active Duty servicemembers were prevented from enrolling in University of Phoenix courses. Not surprisingly, this also did significant harm to the University's reputation and financial position.

In 2009, before the administration's regulatory assault on the for-profit sector, the company's stock reportedly traded at \$86.54 per share. Due to this targeted attack and prior to the release of the *Reveal News* hit piece, it was traded at around \$16 per share, and reached a low of around \$6 a share shortly after DOD's [Department of Defense] unfair probation decision. Had this probation decision not been overturned, thanks to the intervention of the Chairman of the Health, Education, Labor, and Pensions Committee, the Veterans Affairs Committee, and the Permanent Subcommittee on Investigations, among others, the University would have been driven into financial ruin. Terminating the University's participation in the Tuition Assistance Program, as I believe the DOD had intended all along, would have left over 9,000 servicemembers attending it without a school to complete their education, effectively extinguishing the time and effort they had already invested in pursuit of a degree. It would also have resulted in decisions by the Department of Veterans Affairs to prohibit the University from participating in the post-9/11 G.I. Bill and the Department of Education regarding title 4 funding. And that would have most certainly devastated the University, just as the administration did with ITT [International Telephone & Telegraph] Tech, in forcing it to close, or as it did with DeVry, forcing it to sell off its campuses.

The purpose of this hearing, in short, is accountability, how such a misguided decision was made, the nontransparent and flawed ways in which it was made, and why it was made, and who was responsible. In this way, today's hearing is bigger than this one case, because if the University of Phoenix could be singled out in this flawed and suspect way, that suggests a deeper failing at the Department of Defense that requires the continued oversight of this committee.

For the background of my colleagues, this committee learned, after the fact, of the Department's October 7th, 2015, decision to place the University of Phoenix on probation. The stated reason for the decision was unauthorized base access and the improper use of, quote, "Challenge Coins." Shortly thereafter, I and other committee chairmen with jurisdictional interest in this case requested additional information on the decision, specifically the role played by the Department of Education's interagency task force that had been established to enforce the President's executive order on for-profit universities. What ensued was a meeting with these Senators and attended by representatives of some eight Federal agencies, including the Department of Defense, the Consumer Financial Protection Bureau, the Federal Trade Commission, the Securities and Exchange Commission, SEC [Securities and Exchange Commission], literally dozens of executive branch personnel. Rather than providing responses to our concerns, this meeting raised additional troubling questions about the administration's hostility toward for-

profit education, including the Department of Defense—at the Department of Defense.

For purposes of today's hearing, the relevant sequence of events begins on June 30th, 2015, when the Center for Investigative Reporting, a publication, published a report in *Reveal News* entitled, quote, "The University of Phoenix Sidesteps Obama Order on Recruiting Veterans." Dawn Bilodeau, the DOD's Chief of Voluntary Education, who recommended the probation decision and drafted and signed the probation letter against the University, participated in that article, acknowledging that the Department was, quote, "cracking down on questionable recruiting practices among for-profits." That same day, the Ranking Member of the Defense Appropriation Subcommittee, Senator Durbin, wrote Secretary of Defense Ashton Carter and urged the DOD, among other actions, to suspend the University from the DOD's voluntary education programs, to investigate and prosecute the University for its use of "Challenge Coins," and to bar it from any further access to military bases. It appears that this letter was enough to propel the DOD into action, for, just 2 weeks later, Ms. Bilodeau reached out to military bases regarding the alleged access violations, stating that, quote, "Congress has urged DOD to investigate the allegations cited in the *Reveal* article."

On July 15th, 2015, in a letter from then-Acting Under Secretary of Defense for Personnel and Readiness Brad Carson to Ranking Member Durbin, Mr. Carson, quote, "confirmed that DOD was completing a full review of University of Phoenix's tuition assistance participation." This confirmation would serve as the basis for an increasingly hostile attack by Senator Durbin and others against the University.

On October 22nd, 2015, I sent a letter to Secretary Carter, raising concerns about the decision to place the University of Phoenix on probation. This decision appeared to rely on questionable and overly technical interpretations of the Memorandum of Understanding [MOU] that governed the interaction of for-profit schools with the Department of Defense. It failed to acknowledge the corrective actions that the University had immediately taken, and it was based in part on allegations made by a news article and other agencies that had been neither initiated nor confirmed by the DOD.

Following additional correspondence and several meetings with committee staff, the Department removed the University of Phoenix from probation in January 2016. I repeat. They removed the University of Phoenix from probation in January 2016. By then, however, major damage had already been done to the University and its mission. For this reason, I directed staff to investigate, among other things, the facts and circumstances that led to the Department of Defense's decision to put the University of Phoenix on probation, the rules, processes, and procedures in place at the DOD that govern its administration of the Tuition Assistance Program, and the interagency enforcement actions against for-profit educational institutions. The facts that have emerged suggest that the reasons that the DOD provided in support of its decision are demonstrably specious. Let us review some of these key facts in greater detail.

First, in its October 2015 probation letter, the Department of Defense cited the allegations in the Reveal News article as a basis for apparent violations of the Memorandum of Understanding, specifically the University's alleged failure to obtain approval for base access from DOD educational advisors. This was wrong. The fact is, the University acted in good faith regarding base access by obtaining approval from base commanders prior to taking any action. The Department of Defense's concerns about base access appear to reflect overly technical violations of the MOU that should not have warranted adverse action.

It's also a fact that, throughout the relevant period, there was considerable confusion among the military services and participating educational institutions about the requirements of the MOU on base access. This arose from a lack of a process at DOD to implement base access compliance rules by the services, themselves. In each instant of a perceived base access violation, the Department of Defense ultimately found that the base, itself, failed to comply with the MOU. So, again, in this broader context of confusion, singling out the University of Phoenix was unfair. And, while subsequent actions by the DOD to clarify proper compliance with the MOU may have been helpful to other universities, it did nothing for the University of Phoenix, which was already paying the price for actions that preceded this additional guidance, and was being held to a standard that was shifting.

Second, in its letter explaining its decision to place the University of Phoenix on probation, the DOD cites, quote, "transgression of Defense Department policies regarding use of its official seals and other trademark insignia relative to Challenge Coins." This, too, was an error. In that very same letter and in subsequent interviews with staff, Ms. Bilodeau stipulated that the University had already responded to these infractions with appropriate corrective action by the time the letter was sent, and that they were no longer a concern of the Department. Moreover, 15 other universities—nine public, five private, and one for-profit—were found to have violated the policies regarding the unauthorized use of Challenge Coins, but they were never placed on probation.

Third, the Department cited civil investigative demands for documents by the Federal Trade Commission [FTC] and the California State Attorney General as reason for its probation decision on the University of Phoenix. This was completely erroneous. A mere request for documents is hardly evidence of misconduct. In fact, the fact—indeed, the fact is, the DOD never undertook its own independent review of the allegations raised by the FTC or California Attorney General investigations. Rather, it merely reviewed their document requests and accepted that they were sufficiently related to the University of Phoenix case to be cited as a basis for the probation decision. As of today, neither of these investigations have found any wrongdoing by the University.

So, if the facts undercut the Department's own case against the University of Phoenix, why did this happen? It was certainly true that the Department lacked uniform guidance to govern its own interaction with for-profit universities and alleged violations of the Tuition Assistance Program. The Department also lacked clear lines of authority, supervision, and accountability, as well as suffi-

cient processes to review allegations of violations of the MOU. These circumstances created an opportunity for an abuse of discretion, led to the inconsistent and unfair enforcement of the DOD's policies on institutions of higher education, and allowed for a single Member of Congress to improperly influence adverse action against a reputable institution of higher education.

The facts of this case also raise troubling questions about the abuse of executive orders to enact an ideological agenda, the role of the Department of Education's unaccountable interagency task force in carrying out that agenda, and to what extent actions such as these usurp the legitimate role of the Congress. None of this should have ever been allowed to happen.

The purpose of this hearing is to ensure that a similar abuse of authority never happens again or there is little reason to believe that the circumstances and events that led to the mistreatment of this one university could not be present or could not manifest themselves elsewhere in the Department of Defense.

Finally, to our witnesses, I want to be clear. I do not take lightly requiring Civil Service employees who are not confirmed by this body to testify before this committee. This is necessary, however, because of the extraordinary circumstances of this particular case, but also what it represents more broadly: a gross abuse of power through a flawed and arbitrary process with insufficient accountability. Indeed, the Department came perilously close to extinguishing one of its own valuable partners in voluntary education programs and the higher education option chosen by thousands of nontraditional students, especially Active Duty servicemembers. I shudder to think how a similar lack of transparency and accountability could manifest itself in other vital DOD missions. I truly hope we will never see anything like this again at the Department of Defense. But, if we do, for as long as I am Chairman of this committee, there will be accountability.

I look forward to hearing from the witnesses. And I thank them for their service to our Nation.

Before I turn to the Ranking Member, Senator Reed, the committee has received statements from Senator Durbin and from Mr. Timothy B. Slottow, president of the University of Phoenix. Without objection, these statements will be made part of the record.

[The prepared statement of Senator Richard J. Durbin follows:]

PREPARED STATEMENT BY SENATOR RICHARD J. DURBIN

Department of Defense (DOD) Voluntary Education programs, including the Tuition Assistance (TA) program, play a critical role in strengthening our military readiness and offering professional development opportunities to the men and women who serve. I have supported these programs in my role as Chairman and, now, Vice Chairman of the Senate Appropriations Subcommittee on Defense. In fiscal year 2014, the Tuition Assistance program cost taxpayers \$538 million.

Given the importance of these programs to servicemembers and the substantial investment by taxpayers, it is vital that both Congress and Executive branch agencies exercise robust oversight of the institutions of higher education that participate and aggressively enforce federal laws, regulations, and other program requirements. As Chairman of the Defense Subcommittee, I held a hearing to examine these programs and shed light on widespread evidence that some institutions, mainly for-profit companies, were exploiting servicemembers to enrich themselves at the expense of federal taxpayers.

On April 27, 2012, to protect servicemembers and veterans from these types of abuses, President Obama signed Executive Order 13607 Establishing Principles of

Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members. As a result of this Executive Order, the Department of Defense issued DODi 1322.25 and developed a Memorandum of Understanding (MOU) to be signed and adhered to by any institution of higher education participating in TA. While it could be strengthened further, the MOU provides for a number of important protections and disclosures for servicemembers and requirements of participating schools.

Congress should expect the Department of Defense to uphold its responsibility to investigate possible violations of the MOU and other applicable federal laws and regulations and take appropriate enforcement action where violations are found. This was the case in June 2015, when an investigation by Aaron Glantz of the Center for Investigative Reporting (CIR) documented troubling recruiting and marketing tactics employed by the University of Phoenix, which in fiscal year (FY) 2014 was the fourth largest recipient of TA funds amounting to more than \$20 million.

Glantz found that University of Phoenix spent \$250,000 over three years to sponsor 89 events at Fort Campbell with one concert featuring reality television personality “Big Smo” costing \$25,000 alone. Across the country the company sponsored events on military bases including rock concerts, Super Bowl parties, father-daughter dances, Easter egg hunts, a chocolate festival, and even “Brunch with Santa.” The events and sponsorships were a foot-in-the-door for the University of Phoenix—allowing the company and its recruiters access to servicemembers on military bases.

In addition, according to Glantz, the University of Phoenix paid DOD to have its employees serve as the exclusive resume advisors at Hiring Our Heroes job fairs and workshops, many of which took place on military bases. A CIR hidden camera documented that all of the resume workshop materials, presentation slides, and sample “successful” resumes were labeled with University of Phoenix marketing, and trainers (University of Phoenix employees) urged attendees to go to the University of Phoenix website for additional information. The investigation also revealed that the company used “challenge coins” with DOD seals and logos to show its close relationship with the military.

On October 7, 2015, DOD notified the University of Phoenix that “In response to allegations published by the Center for Investigative Reporting on June 30, 2015 ... the Department has conducted a review of the agreements between the University of Phoenix and the DOD, as reflected in the DOD MOU. This review revealed several violations of the DOD MOU attributed to the University of Phoenix.” DOD’s investigation also found that “the frequency and scope of these previous violations of the DOD MOU is disconcerting.”

In its letter to the company, DOD also noted with concern that the University of Phoenix was “under review by both the Federal Trade Commission (FTC) and the California State Attorney General.” DOD was right to be concerned by this. In fact, the company faces two separate investigations by the FTC—one related to deceptive marketing and advertising and a second related to safeguarding student and staff personal information. The company also faces investigations by at least three other state Attorneys General, the U.S. Securities and Exchange Commission, and the Department of Education Inspector General.

As a result of its findings, the Department placed the company on probation and “with a view to minimizing harm to students” prohibited new TA enrollments and transfers as well as restricting the company’s access to DOD installations. As part of its due process procedures, DOD gave the University of Phoenix 14 days to submit a response to be considered during a review of “whether continued participation in the DOD TA program will be allowed and, if so, in what status, and whether further action, to include termination in accordance with paragraph 6(f) of the University of Phoenix MOU with the DOD, is warranted.”

I was pleased, that with these steps, the Department of Defense took seriously its obligation to protect servicemembers and taxpayers and to enforce its MOU with the University of Phoenix. But I was not alone. A number of veterans service and other organizations sent a letter to Secretary Carter on October 27 commending the Department for its actions “to protect the integrity of the Tuition Assistance program and to protect servicemembers from deceptive recruiting practices” in the case of University of Phoenix. Among the signers were the Air Force Sergeants Association, Association of the U.S. Navy, Blue Star Families, Iraq and Afghanistan Veterans of America, Paralyzed Veterans of America, Student Veterans of America, Veterans Education Success, Veterans for Common Sense, Veterans Student Loan Relief Fund, VetJobs, VetsFirst, and Vietnam Veterans of America.

But the University of Phoenix is not the only for-profit education company that poses a risk to servicemembers and taxpayers. The high profile bankruptcies of Corinthian Colleges, Incorporated and ITT Tech were the end result of years of predatory and deceptive corporate practices that put profits above students. Their clo-

tures left tens of thousands of students, including servicemembers, in the lurch. But it hasn't stopped there. Other for-profit education companies participating in TA are accused of engaging in similar fraud and have closed or are on the brink of closure. With for-profit colleges closing due to fraudulent behavior at an alarming rate and such a large share of TA funds flowing to this industry (46 percent in fiscal year 2014), active oversight by the Department of Defense is more important than ever.

Increasing DOD's obligation to engage in strong oversight and enforcement is the fact that federal law actually incentivizes for-profit colleges to target servicemembers and veterans. The 90/10 rule requires for-profit colleges to derive at least ten percent of their revenue from non-federal sources. Shockingly, a loophole in the law, allows companies to count Department of Defense and Department of Veterans Affairs (VA) education benefits as non-federal revenue. This encourages for-profit companies to aggressively target and recruit, even using false or deceptive information, servicemembers and veterans in order to line their pockets with more federal taxpayer dollars while still complying with the law.

It means that many for-profit companies actually receive greater than 90 percent of their revenue directly from federal taxpayers. According to a 2013 analysis from the Department of Education obtained by the Center for Investigative Reporting, 133 for-profit colleges received more than 90 percent of their revenues from taxpayers when DOD and VA benefits were included in the calculation. I believe Congress must close this egregious loophole that puts our men and women in uniform in jeopardy and have authored the Protecting our Students and Taxpayers (POST) Act (S. 2272) to do so. I hope my colleagues in both parties will work with me on the common-sense measure.

I thank the Ranking Member, Senator Jack Reed of Rhode Island, for submitting this testimony on my behalf. I thank Secretary Carter and the dedicated staff at the Department of Defense for their work to ensure the integrity of DOD Voluntary Education programs and to protect servicemembers from predatory companies that seek to exploit our brave men and women in uniform.

[The prepared statement of Mr. Timothy P. Slottow follows:]

PREPARED STATEMENT BY TIMOTHY P. SLOTTOW

On behalf of the more than 1 million alumni, students, faculty and staff of the University of Phoenix, I offer the following statement to the United States Senate Committee on Armed Services in connection with its examination of Department of Defense Voluntary Education Programs.

University of Phoenix holds a unique place in American higher education. Nearly 40 years ago, the University was founded to help individuals that had for too long been underserved and overlooked by traditional colleges and universities. Although so-called nontraditional students still face many challenges in obtaining a quality higher education in America, the nation has come a long way in its service to these students, in no small part because of the innovative leadership role the University of Phoenix has played. In 2015, University of Phoenix taught a reported 214,500 students. More than half of them are first-generation college students determined to pave a new path to success in life through higher education. Most are working adults over 30 years old who juggle work responsibilities, including serving in the military, and care for dependents at home while attaining a degree—a milestone that not only changes their families, but future generations. Nearly half (46.4 percent) report as ethnic minorities, and 66 percent are female.

As a regionally accredited, degree-granting academic institution, University of Phoenix proudly serves thousands of U.S. Service members and understands its obligation to provide quality degree and certificate programs that advance their personal and career aspirations and prepares them for future career and technical pursuits, both inside and outside of the Department of Defense.

The value of University of Phoenix degrees is evidenced by the 950,000 alumni who live in every region of the country and work in all sectors of today's job market. It is also directly related to the faculty practitioners who teach at the University—9,539 faculty have worked or are currently working for Fortune 1000 companies. The University faculty have an average 20.7 years of professional experience and have taught at the University for an average of 8.4 years. The average class size is 14.2.

University of Phoenix proudly issues an Academic Annual Report to publicly demonstrate its commitment to transparency and outline what independent third-party and internal tools are used to measure student learning, academic quality, affordability and the alignment of our academic programs and student learning goals to

employers' needs in this country.¹ The University's value is further demonstrated by the U.S. Department of Education College Scorecard, released in September 2015. The first College Scorecard included data on 7,676 colleges and universities, including University of Phoenix, on a wide variety of criteria. In the Scorecard, University of Phoenix placed in the top 25 among large institutions in salary after attending.²

Since its founding in 1976, not only has the University of Phoenix proudly served the military community, but it has demonstrated a longstanding commitment to policies, regulations, and statutory requirements that ensure active-duty and veteran students are well served and have the resources and protections necessary to maximize the return on their educational investment.

On February 2, 2012, University of Phoenix joined with leading Veteran Serving Organizations in calling on President Barack Obama and the Congress to support new safeguards that would foster responsible decision-making and protect Service members and veterans who seek to use their educational benefits. The University called for mandating upfront educational counseling and developing a formal, integrated government-wide complaint tracking system. Ardent and effective advocacy on behalf of these enhancements designed to "rein in bad actors across all sectors of higher education" helped lead to the enactment of Public Law 112-249 (*Improving Transparency of Education Opportunities for Veterans Act*) and the President's Executive Order 13607—*Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members*.

Both the Executive Order 13607 and the new postsecondary education complaint system are integral parts of the Department of Defense Memorandum of Understanding outlining requirements related to participation in the Voluntary Education Programs. University of Phoenix supports each of these initiatives and has taken direct steps to advocate for enhancements and improvements that help students. In a June 29, 2012 letter expressing support for Executive Order 13607, the University wrote: "We believe the student protections, systems and procedures we have in place can help inform the final framework and implementation guidelines of the President's Executive Order, including the Principles of Excellence. Our institutions' doors are wide open to the Secretaries of Defense, Veterans Affairs, and Education as the operational requirements are developed."

The vital role of Department of Defense Voluntary Education Programs in serving military personnel pursuing postsecondary education and training cannot be understated. The integrity and sustainability of the Tuition Assistance program must be prioritized and diligently maintained. We thank the Committee for its work in this regard and appreciate the steps taken by the Department of Defense to partner with us to improve operational processes in a manner that protects educational choices made by active-duty students and eliminates unnecessary complexity and confusion.

Institutions of higher education, taxpayers and active-duty and veteran students themselves are best served when the rules are clear, fair and transparent. When there are shortcomings in this regard, they must be identified and immediately corrected in order to continue to meet the essential goals of Voluntary Education Programs to: (1) play a critical role in the recruitment of high-performing talent in the Armed Services; (2) enhance the preparedness of service members for 21st century warfare; and, (3) ensure successful service member transitions to civilian life where they become active and engaged citizens.

We remain steadfast in our commitment to provide access to higher education opportunities that enable students to develop the knowledge and skills necessary to achieve their professional goals, improve the performance of their organizations, and provide leadership and service to their communities. We stand ready to work with the Committee, the Department of Defense and all higher education stakeholders to improve services to students and protect investments made by taxpayers.

¹2015 Academic Annual Report <http://www.phoenix.edu/content/dam/altcloud/doc/about-uopx/academic-annual-report-2015.pdf>.

²U.S. Department of Education, College Scorecard. (2015). MERGED2011—PP.csv. Retrieved September 15, 2015 from <https://collegescorecard.ed.gov/> Note: Data for the University's main campus, as well as several other campuses, is not displayed on the 2016 College Scorecard due to changes in the IPEDS Unit ID's assigned by the Department of Education.

The committee has received a letter from Mr. Walter Ochenko, policy director of Veterans Education Success. Without objection, this letter and all other letters received on this matter through December 8th will be made part of the record.

[The information referred to follows:]



November 22, 2016

Senator John McCain
Chairman
Senate Committee on Armed Services

Senator Jack Reed
Ranking Member
Senate Committee on Armed Services

Dear Senators:

On behalf of the service members and veterans we serve in utilizing their educational benefits, Veterans Education Success writes to express our continuing support for the work of the Defense Department in overseeing voluntary educational, including Tuition Assistance (TA) and related programs.

Tuition Assistance is important to service members and to the professional development needs of the Armed Services. It also serves the Armed Services' career retention needs. We joined with other military and veterans' organizations in strongly supporting the creation of a helpful Memorandum of Understanding (MOU) with schools by DOD. The MOU helps to ensure that TA and other voluntary educational programs meet the Services' objectives and provide fair and impartial access to bases and posts. The common-sense policies and procedures in the MOU ensure participating colleges and universities are responsive to the needs of the Armed Services, military students, and their families.

Veterans Education Success looks forward to working with the Committee on Armed Services to ensure the continuation of robust, efficient, and effective DOD Voluntary Educational Programs.

I would respectfully request that a copy of this letter be included in the official record of the hearing on Voluntary Educational Programs scheduled for November 29, 2016.

Sincerely,

Walter Ochenko
Policy Director
Veterans Education Success



STUDENT VETERANS OF AMERICA
1012 14TH ST NW, SUITE 1200, WASHINGTON D.C. 20006
WWW.STUDENTVETERANS.ORG

Senator John McCain
Chairman
Senate Committee on Armed Services

Senator Jack Reed
Ranking Member
Senate Committee on Armed Services

Dear Senators:

On behalf of our nearly 1,400 chapters across the country and the 550,000 student veterans we represent, Student Veterans of America (SVA) is pleased to share the perspective of those most directly impacted by this subject with this committee. With a myriad of programs supporting their success, rigorous research development seeking ways to improve the landscape, and advocacy throughout the nation, we place the student veteran at the top of our organizational pyramid. As the future leaders of this country, nothing is more paramount than their success in school to prepare them for productive and impactful lives.

On behalf of the members of Student Veterans of America, I am writing to express our continuing support for the work of the Defense Department in overseeing its voluntary educational programs including Tuition Assistance and related programs.

At Student Veterans of America, we value education for student veterans. As a result of this we view Tuition Assistance (TA) as an important component of the Services' professional development, readiness and career retention efforts. SVA, in partnership with other military and veterans group strongly supported the creation of a Memorandum of Understanding (MOU) by the DoD to ensure that TA and other voluntary educational programs meet the service objectives, provide fair and impartial

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access to bases and posts and ensure that participating colleges and universities are responsive to the needs of military students and their families by abiding by common-sense policies and procedures in MOU.

Student Veterans of America looks forward in continuing our work with the Committee on Armed Services to ensure the DoD Voluntary Educational Programs remain robust, efficient and effective.

I would respectfully request a copy of this letter be included in the official record of the hearing on Voluntary Educational Programs scheduled for 29 November 2016.

Sincerely,

Derek Fronabarger

Director of Policy and Government Affairs

Student Veterans of America

Chairman MCCAIN. Senator Reed.

STATEMENT OF SENATOR JACK REED

Senator REED. Well, thank you very much, Mr. Chairman.

And let me join you in thanking the witnesses for joining us today to provide testimony on the operation of voluntary education programs within the Department of Defense and the Department's efforts to protect servicemembers, veterans, and their families.

I realize the Chairman's focus is on the University of Phoenix and the compliance issue that they have faced over the past 2 years, but I believe this hearing is especially important to highlight the Department's efforts across the board to ensure consistent and equitably applied standards are in place to protect servicemembers, veterans, and their families from abusive and deceptive marketing practices by any school, regardless of whether they are for-profit, private, not-for-profit, or public institutions. The University of Phoenix example is but one instance where the Department has acted to ensure educational institutions live up to the standards they agreed to in order to participate in the Tuition Assistance Program. Indeed, as the Department's response to Senator McCain's questions concerning the University of Phoenix has shown, these rules apply to all schools and are being enforced against all schools.

The administration's goals in this area are worthy and should continue even as a new administration takes office. By Executive Order 13607, promulgated 2012, the administration seeks to ensure that Federal military and veterans educational benefits programs

are providing servicemembers, veterans, spouses, and other family members with the information, support, and protections they deserve. The program does this by requiring participating schools to make a wider array of information available to prospective students by refraining from abusive and deceptive recruiting practices and providing highest-level academic programs and students or systems. And I think we can all agree that these are worthy goals.

Underlying these issues is something else that I've pointed to repeatedly, and that's the so-called 90/10 rule. And this rule states that, for for-profit schools, they must derive at least 10 percent of their revenue from non-Federal student-aid sources. Paradoxically, DOD tuition assistance in VA [Veterans Administration] G.I. Bill programs count as non-Federal student-aid sources. And that means, for every dollar of TA [Tuition Assistance] or G.I. Bill funding for a for-profit school, they can acquire \$90—\$9 more in Federal student loans. And as Holly Petraeus has testified, that leaves a bulls eye too often on the backs of servicemembers, veterans, and their families, which explains why some for-profit educational institutions are desperate to enroll servicemembers, and also why the Department of Defense has to be on its guard.

This 90/10 loophole provides a powerful incentive to recruit servicemembers and veterans, even to the exclusion of effective student support programs. As Ms. Petraeus testified in 2013, a school—and I will emphasize, not the University of Phoenix—was guilty of signing up servicemembers with brain injuries to educational programs that they did not need and without their full understanding, employed 1,700 recruiters—the school did—and only one full-time employee dedicated to helping students gain employment after completing their studies. This illustrates the perverse incentives the system has created and also, once again, the need for someone to be watching out for these veterans, their families, and their spouses.

And I agree with Holly Petraeus, who has advocated that we should change this statutory loophole and support legislation to ensure that these DOD funds and VA funds are counted as Federal resources, not as private resources.

But, we concede, in the collapse of Corinthian College and ITT, the need for stricter standards and greater transparency. Tens of thousands of students, including servicemembers and veterans, have been left in the lurch because of the failure of these schools. They've taken out loans or used their G.I. Bill benefits with little of anything to show for it. The administration's effort under the executive order are critical to preventing these problems and ensuring that military and veteran students can be confident that all institutions participating in DOD, TA, and VA education benefit programs adhere to reasonable quality standards and fair practices.

I look forward to hearing from our witnesses about these programs, how we can strengthen these protections and ensure that we protect the men and women who have protected us.

Thank you, Mr. Chairman.

Chairman MCCAIN. Thank you.

We'll begin with you, Mr. Levine. Welcome back.

STATEMENT OF HONORABLE PETER K. LEVINE, ACTING UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS; ACCOMPANIED BY STEPHANIE BARNA, PERFORMING THE DUTIES OF PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS, AND DAWN BILODEAU, CHIEF, VOLUNTARY EDUCATION PROGRAMS, DEPARTMENT OF DEFENSE

Mr. LEVINE. Thank you, Mr. Chairman, Senator Reed, members of the committee. It is a pleasure and an honor to appear before this committee.

You have my written statement, so I'm not going to read from it, but there are a few points that I think would be helpful for me to make up front about the program and about the issues that we're—that we've been trying to deal with, the process we've been trying to deal with.

As you know, I was not in P&R [Personnel and Readiness] at the time of the events that you're talking about with the University of Phoenix, with this program. The two Voluntary Education and Tuition Assistance Programs fall under P&R responsibility, and so those are now my programs. And Ms. Barna and Ms. Bilodeau work for me.

The Voluntary Education and Tuition Assistance Programs are both incredibly valuable programs to the Department and, to my lights at least, incredibly vulnerable programs to abuse. I want to put that in perspective. These programs provide continuing education for 286,000 servicemembers. That makes those servicemembers better soldiers, airmen—sailors, airmen, and marines, and it helps them also to prepare for life after service. It is a particularly valuable program, because it's broadly open to Active Duty members, which means that, unlike some—many of our other continuing education programs and advanced education programs, this is available to enlisted members—broadly available to enlisted members so that, throughout the ranks of the service, many members can benefit from this, as opposed to some of our other programs, which tend mostly to benefit officers.

At the same time, as valuable as this program is, we view this as a program that's potentially vulnerable to abuse. The reason, to my lights—there are several reasons for that. One is that this is a program that involves what I would call distributed decision making. We pay the bills, but servicemembers make the decisions. So, we don't have any central place, like with contracting, where we're monitoring what the decision is, making the decision, making the decision on a rational basis. We have 286,000 servicemembers who are in the program, plus others who may be considering it, each of whom is making a decision for him or herself.

As we look at that, we see—and you see this in our prepared testimony—only 53,000 of the 286,000 servicemembers who are participating in the program—we have 286,000 members participating, only 53,000 receive certificates or degrees. So, that means that close to 80 percent of the participants in the program will not ultimately receive certificates or degrees from the program. Now, there are lots of reasons for that. That doesn't mean that that's abusive, per se, but it means that they're—because it takes—it's a hard thing to do—you've got a full-time job, you're on Active Duty; the

Active Duty comes first. It can take many years to get a degree. But, it means that we have to be sensitive to the value proposition for our servicemembers. What are they getting out of this?

At the end of the day, we—we also have a problem, as Senator Reed mentioned, with student loans. We have concern that, even though tuition is paid by DOD, we have some participants participating in education institutions that may be pressuring students to take loans, even where they don't need loans, because their tuition is being paid. We have some cases of bad debts and debt problems.

But, the real vulnerability of the program, to me, is that it's outside of our wheelhouse as the Department of Defense. We're not an education—we're not experts in education, so we want to protect our servicemembers, but we're not the people who can figure out the value proposition. We have roughly 2,700 educational institutions participating in the program. That includes very good educational institutions. They all have to be accredited, but we can't tell which ones are good and which ones are bad. We can't tell—and when we hear concerns about the value proposition, we're not well-positioned, because of our expertise, which is in defense not in education, to rank institutions and to provide our servicemembers with accurate and helpful information.

The one interagency meeting that I participated in on this subject since I've been in P&R, I raised two issues. One was that we need to treat for-profits and nonprofits alike, that we can't distinguish and discriminate against anybody because they're for-profit; and the other is that we need help, and we need help in understanding which—how to rate and rank institutions, and to determine which ones are providing us good product and which ones aren't.

In the absence of that kind of good information, we have chosen to rely on what I call surrogate measures or prophylactic measures to try to protect our servicemembers. And one of the key members that—one of the key measures that we use in that regard is the issue of marketing and base access. I would say, if I could—if I can give servicemembers really good information about who is providing a good product and who isn't providing good product—who isn't providing good product—I'd be a lot less concerned about base access and marketing. But, when I don't know, and I can't judge who's providing good product and who isn't, this is something that I fall back on and rely on, because, when I've got allegations out there about misrepresentation and deceptive actions and multiple unsolicited phone calls or emails or high-pressure recruitment tactics, false representation about degree programs, I want to hit—I want to try to nip that in the bud and hit it at the front end, rather than waiting until after there's an allegation and I go through some lengthy proof, if I can control it.

So, this is something that took place before I was there, but we came up with an MOU which says, basically, "If you want to have access to a base for marketing purposes, you have to come through your educational advisor on the base." And the educational advisor on the base is supposed to allow you to market only in controlled circumstances, like sanctioned education fairs. So, we have viewed direct marketing to our students as a negative. Now, we could take that as the right rule or the wrong rule, but it's—there's no ques-

tion in my mind that is the rule, that we have told all the education institutions who are participating in this program, "You have to sign an MOU if you're going to participate, and your MOU will provide that you're going to go through the education advisor for any access to the base." And we've told our education advisors, "Don't approve access for the purpose of unlimited marketing. Marketing has to be in controlled circumstances, because we don't—we're not trusting of the kind of marketing that takes place in these programs."

So, that could be a bad rule, or it could be a good rule, but that is the rule. I can see, from an education institution's point of view, that you could look at that, and you've—say, "Well, I'm providing a good product. I'm helping servicemembers. I'm putting them at in a better position to succeed, and I'm not telling them anything that's not true. And so, you telling me I had to go through an education advisor is a ticky-tack violation, it shouldn't count." That's great, and I understand and——

Chairman MCCAIN. No.

Mr. LEVINE.—respect that.

Chairman MCCAIN. No, that's not the point. The point is, if the commanding officer who has responsibility for everything that happens on that base gives a permission that clearly is the responsibility of the commanding officer. That's the way the system works, Mr. Levine.

Mr. LEVINE. I understand that, Mr. Chairman. But, the education institution signs an MOU saying that it will go through the education advisor, and that's the education——

Chairman MCCAIN. No matter what it says——

Mr. LEVINE.—institution's obligation to do that.

Chairman MCCAIN.—we give the commanding officer the responsibility for what happens under his or her command. And that's the way the system works. And you should know that by now.

Mr. LEVINE. I do know that. And I also know that, when we have a government wide rule of some kind, or a DOD-wide rule, whether it's contracting or something else, if I have a rule——

Chairman MCCAIN. I don't care what the DOD——

Mr. LEVINE. Yeah.

Chairman MCCAIN.—rule is, Mr. Levine. It's whether—the responsibility and authority rests with the commanding officer of an installation unless it is overridden by someone superior. The education officer is not superior.

Please proceed, and wrap it up.

Mr. LEVINE. So, from DOD's point of view, we don't know whether the institution is providing a good product or not, and we don't know whether——

Chairman MCCAIN. So, we placed them on probation without knowing it.

Mr. LEVINE. We don't know whether they're providing good product or not, and we don't know whether they are accurate in their representations. We have chosen—but, what we do know is, if the institution isn't complying by its MOU, which provides, "You will go to the education advisor," then the one thing that we do know, that they're being noncompliant, so we have reason to be concerned about whether they're being helpful in other areas.

Let me turn to the process, because I'd like to talk to the process briefly, as well.

I've looked at this since I came in. As I said, I wasn't a part of this. I think that I would say DOD complied with its own processes in how it went through this. There is no place where I can see where we violated law or regulation. Having said that, I think the process was crappy, Mr. Chairman. I don't think that we should have a process which doesn't provide advance notice to an institution before it's placed on probation. I think that that's a significant decision, which has a major impact on the private institution. And, as the Department of Defense, we should be more responsible than that, and we should have a process which provides advance notice and opportunity to respond. We didn't do that in that case. Our process didn't provide for it. But, it should have. And that was a bad process. And we have taken steps to fix that. We have to go through—before it's formal, we have to go through Notice in Public's Comment, but I've told my people that we're going to provide notice and an opportunity to respond in the future before we put anybody on probation.

So, in terms of your concerns about the process, I share your concerns. I think there are things that we can improve. There are other places in our—in my statement where I've talked about things that we can and should improve in this regard.

Let me just conclude quickly by saying a couple of words about the two witnesses to my left and to my right. As you've noted, Mr. Chairman, Dawn Bilodeau is a GS [General Schedule]–15. We don't normally have GS–15s testify at hearings. We have complied with your request in this case. She's agreed to appear. The reason we don't like to have GS–15s appear is because GS–15s don't set policy for the Department. When GS–15s act, they act pursuant to delegated authority from senior officials, and we remain responsible and accountable for their actions. Even if we didn't know about them, we would be responsible and accountable for those actions.

In this case, Ms. Barna has testified—has informed you and will testify today, she did know and she did approve of Ms. Bilodeau's actions, and she accepts responsibility and accountability for what was done in this case.

So, let me just conclude by saying a couple of words about Ms. Barna, who has been my Principal Deputy since I joined P&R, about 8 months ago. During that time, I have consistently relied on Ms. Barna. She—her hard work, knowledge, judgment, and integrity are unparalleled, in my view. From the time that she joined the Department of Defense as a JAG [Judge Advocate General] in 1989, I think that everybody has—who has worked with her understands that she has made the Department a better place. That includes staff of this committee. It includes me before I took this position. I cannot tell you how much I rely on Stephanie, and how much I trust her integrity and her work ethic to do the right thing. So, if she tells the committee why she took an action, I think you should take that to the bank. That's why she took the action, and not for any other reason.

With that, I conclude my testimony, and we're—we'd be happy to answer any of your questions.

Thank you, Mr. Chairman.

[The joint prepared statement of Mr. Levine, Ms. Barna, and Ms. Bilodeau follows:]

JOINT PREPARED STATEMENT BY MR. PETER LEVINE, MS. STEPHANIE BARNA, AND MS. DAWN BILODEAU

Chairman McCain, Ranking Member Reed, and distinguished Members of the Committee, we appreciate the opportunity to appear before you to discuss the Department of Defense (DOD) Voluntary Education Program. Through 283 Education Centers operating at military installations around the world and on-line, the Department offers a full spectrum of education services and benefits to our Service members, including the opportunity to enroll in post-secondary education programs that can lead to industry-recognized credentials, and undergraduate and graduate degrees. Service members' costs to participate in these education programs may be reduced through appropriated fund financial support in the form of Tuition Assistance (TA).

TA support often makes the difference between whether or not a Service member can afford to take a class. An eligible Service member may receive tuition assistance benefits of up to \$250 per semester hour, up to a maximum of \$4,500 per fiscal year. Last year, DOD paid more than \$518 million in appropriated TA funding for qualifying military students.

Together, the Voluntary Education Program and TA seek to facilitate quality learning and educational opportunities for military Service members, contributing to their enhanced readiness and mission accomplishment while in service—completing and enhancing their education prepares our Service members to be better soldiers, sailors, airmen, and marines, as well as to be better critical thinkers, analysts, problem-solvers, and leaders. Education also enhances the likelihood that a Service member will successfully transition to civilian life at the end of his or her term of service.

Our military students face unique challenges. They attend school during off-duty hours and take courses in a part-time capacity. The military mission, deployments, and permanent changes of station often take precedence over Service members' academic coursework, and the rigors of military life frequently require Service members to take breaks of months or even years between courses. These challenges make on-line education a very appealing and useful model for many of our Service members—in fact, in fiscal year 2015, 85 percent of the courses taken through TA were conducted on-line. Also, because of these challenges, our Service members often complete a degree program only after many years of commitment to their studies and many never receive degrees at all.

In fiscal year 2015, the last year for which complete data is currently available, approximately 286,000 Service members enrolled in more than 760,000 post-secondary courses using military TA, but only 53,000 Service members earned degrees or other credentials.

In overseeing the Voluntary Education and TA programs, we are guided by two core principles: a commitment to ensuring that our Service members are provided a diverse range of high-quality educational opportunities and good stewardship of the taxpayer dollars that comprise the TA account. The substantial appropriated fund dollars expended for the TA program, the wide diversity of educational institutions participating in the Voluntary Education and TA programs, the extended periods of time required and unconventional delivery mechanisms utilized, and the relatively low rate of successful completion with degrees or certificates, all give the Department reason to be concerned about the extent to which these two core principles are being met.

These concerns have been enhanced, over time, by Service member complaints and published reports indicating that some participating institutions may have engaged in misrepresentation or deceptive actions, including multiple unsolicited phone calls or emails used as a high-pressure recruitment tactic, false representations about degree programs, misleading statements regarding accreditation, and promotion of costly private or institutional loans.

In 2014, President Obama issued Executive Order 13607, *Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members* (commonly referred to as the “*Principles of Excellence*”). The *Principles of Excellence* seek to prevent abusive and deceptive recruiting practices that target the beneficiaries of federal educational benefits, including DOD TA. In July 2014, DOD updated its policies governing the Voluntary Education Program and TA to incorporate the *Principles of Excellence*, as set forth in Department of Defense Instruction (DODI) 1322.25, *Voluntary Education Programs*. Effec-

tive September 5, 2014, any educational institution providing educational programs and to which appropriated TA funds are to be paid on behalf of an enrolled Service member student, must execute a new memorandum of understanding (MOU) with DOD. Consistent with the *Principles of Excellence*, the revised MOU requires educational institutions to provide meaningful information about the financial cost and quality of their programs so that military students can make informed decisions about where to attend school. The revised DOD MOU also requires that each participating educational institution be accredited by a body recognized by the Department of Education and increases protections for our Service members and their families by forbidding unfair, deceptive, and abusive recruiting practices, requiring high quality academic and student support services, and strengthening procedures for access by educational institutions to DOD installations. Currently, more than 2,700 main educational institutions have signed the DOD MOU; a number of other educational institutions elected to drop out of the TA program rather than sign the updated MOU.

When educational institutions agree to participate in the DOD Voluntary Education and TA Programs, they agree to abide by the terms of the MOU and applicable DOD policy as set forth in DODI 1322.25. The MOU expressly provides that DOD may “terminat[e] and suspend[] an MOU with an educational institution... at any time for failure to follow a term of this MOU” (DODI 1322.25, Appendix to Enclosure 3, *Template of DOD MOU Between Office of the USD(P&R) and Educational Institution*, section 6f).

In January 2014, DOD worked with other agencies to launch the new Postsecondary Education Complaint System (PECS) to enable appropriate officials to identify and address unfair, deceptive, and misleading practices that may contravene the *Principles of Excellence*. PECS is a centralized, online system that provides a vehicle by which Service members may report negative experiences with educational institutions. DOD reviews each such complaint and reaches out to the educational institution identified in the complaint for a response, which is provided to both the complainant and the Department. The Department endeavors to provide the complainant with updated information about his or her case until it is resolved. At the same time, the Department utilizes information received through PECS and from other sources (e.g., field reports, court cases, other federal agency referrals, and media reports) to evaluate the educational institutions that receive appropriated TA funds on behalf of our military students, ensure that our Service members are receiving the highest caliber education, and foster good stewardship of the taxpayer dollars that comprise the TA account. If an incoming report is determined to represent an issue of potential non-compliance with the provisions of the DOD MOU or the *Principles of Excellence*, the Department sends an email to the educational institution named in the report.

The email typically includes details of the allegation, information about the potential impact if the allegation is substantiated, and provides an opportunity for the educational institution to respond in writing. If a violation is substantiated, the Department may take actions, depending on the severity, scope, number, and effect of the violation(s), that range from a written warning to a directed institutional compliance program review to termination of the DOD MOU.

The Department takes very seriously its duty to oversee compliance by educational institutions with the standards set forth in the DOD MOU. To the greatest degree practicable, the Department follows the same review and enforcement processes for all complaints and allegations of non-compliance, and for all educational institutions that receive appropriated TA funds, without regard to the identity of the participating institution.

While more can and has been done to clarify and enhance these policies, we believe that the University of Phoenix (UoP) probation was addressed in accordance with established policies and the Department’s overriding requirement to protect both Service members and the taxpayers. UoP signed a revised MOU, which included UoP’s promise to comply with all of the requirements associated with the *Principles of Excellence*, on August 28, 2014. Numerous alleged violations followed. In particular:

- Between January 2014 and June 30, 2015, there were 19 *Principles of Excellence*-related PECS complaints filed against UoP—the most filed against any recipient of TA funding in that period. The allegations set forth in these complaints were wide ranging, addressing such matters as the quality of education provided, the transfer of academic credits, and tuition refund and collection issues. After initial compliance review, six of these complaints were not substantiated. The balance of the complaints was found to be valid.
- On June 11, 2015, the Chief of DOD Voluntary Education participated in a media interview to inform a PBS [Public Broadcasting Station] News Hour seg-

ment on the Department's implementation of the *Principles of Excellence* and was confronted with allegations that UoP had violated a DOD policy intended to prevent the appearance that DOD endorses or favors the programs and services offered by a particular institution over those of another by prohibiting the use of the Departments' official seals in their marketing, promotional, or other materials. UoP was also alleged to have engaged in other recruiting practices that were inconsistent with the MOU, including violations of the DOD policy regarding base access.

- On June 30, 2015, the Center for Investigative Reporting (CIR) published an article entitled, "*University of Phoenix sidesteps Obama order on recruiting veterans.*" The article cited several examples of marketing and recruiting efforts by UoP—paying for the sponsorships of briefings and events on several military installations without properly securing base access authorization—that, if true, would reflect clear violations of the DOD MOU. DOD confirmed with the Military Services that base access and recruiting and marketing violations had occurred at the identified installations, as alleged.
- In that same period, DOD became aware of ongoing inquiries by the Federal Trade Commission and the California State Attorney General into UoP recruiting and marketing practices involving military students.

On the basis of these reports from multiple sources, the Department followed established procedures by informing UoP of the alleged MOU violations and requested that UoP take appropriate corrective actions, as it did with other educational institutions alleged to have violated their MOUs with DOD.

Over a four month period beginning with the PBS interview on June 11, 2015, the Department sent six emails to UoP notifying it of potential violations of the MOU regarding DOD's trademark policy and alleged violations of the installation access provisions. In contrast to other educational institutions that swiftly acknowledged their incidents of non-compliance and agreed to work with DOD to bring their activities back into compliance as quickly as possible, UoP responded to these emails without acknowledging error. While UoP promised to take corrective action with regard to the use of DOD seals, it continued to assert a right to utilize base access in a manner inconsistent with the terms of the MOU.

For this reason, the Department determined that enforcement action was warranted. On October 7, 2015, UoP was notified that its MOU with DOD was being placed in a probationary status, which temporarily limited its access to bases and precluded UoP from using TA to enroll new students. The letter of probation also advised that while in a probationary status, UoP was authorized to "teach out"—meaning that current UoP students who were receiving DOD TA would be permitted to complete courses already in progress and enroll in new courses deemed to be a part of the student's established education degree plan. Further, the probationary status of the UoP MOU did not preclude any military member from using funds other than TA to enroll in any UoP course.

After the issuance of the probation letter, the Department endeavored to work with UoP leadership to bring UoP back into compliance and good standing. On October 21, 2015, UoP responded to the allegations set forth in the letter of probation with a 19-page letter, accompanied by multiple exhibits. Rather than undertaking to bring UoP into compliance with the MOU, the letter asserted that UoP could override DOD policy and MOU terms regarding base access through inconsistent agreements with base commanders. In addition, the UoP response letter described conduct that appeared to constitute additional violations of the MOU, including issues with UoP accreditation, infringement on DOD intellectual property on UoP websites and in marketing materials, and numerous additional agreements for installation access that did not comport with the MOU.

On November 15, 2015, DOD appointed a member of the Senior Executive Service to work personally and directly with the UoP President to gather needed information and bring UoP back into compliance with the MOU. From that time forward, DOD and UoP were able to develop a more cooperative relationship. On January 15, 2016, the Department determined that sufficient corrective action had been taken and UoP was removed from probation, subject to enhanced DOD oversight for a period of one year. This action allowed UoP to resume the enrollment of new military students eligible for TA and access installations for purposes of participating in education-related activities, including commercial sponsorship.

Since its removal from probation, UoP has continued to work cooperatively with DOD and, to the best of DOD's knowledge, has complied with the requirements of the MOU and the *Principles of Excellence*.

The Department remains committed to ensuring educational institutions are good partners in the delivery of quality educational opportunities that allow servicemembers to realize their educational goals. An educational institution's com-

mitment to abide by the DOD MOU is imperative to enabling viable DOD Voluntary Education and TA programs.

At the same time, DOD is committed to the continuous improvement of all of its programs, and recognizes that clearer communications and more precise policies would likely have yielded a speedier and more satisfactory outcome in this case.

First, DOD has initiated enhanced communication with educational institutions regarding trademark law and regulations and installation access policies and procedures with a view to preventing common violations. With DOD guidance, the Services have standardized and automated the installation access request process, rendering it more transparent, consistent, and timely. A standardized request form and submission process now applies to every military installation. For example, any educational institution that desires to participate in an activity on any DOD installation can submit its request for access online. The request is automatically routed to the responsible installation Education Advisor for review and action. DOD recently learned of assertions that some Educational Advisors were confused about their duties and responsibilities in the base access process and will consider generating a training module to address this potential knowledge deficit.

Second, DOD is taking action to improve and update its policies and procedures for placing an educational institution in probationary status. The policy will provide for formal written notice of, and an opportunity to respond to, a proposed probation—not just to individual allegations of non-compliance with the DOD MOU or other Departmental concerns—before probation is imposed. The policy will make clear that probation is intended as an opportunity for remediation of non-compliance, and will clearly distinguish among the different statuses and processes associated with probation, suspension, and termination. The policy will prescribe a timeline for decisions and actions associated with the probation process, all with a view to ensuring transparency and expeditious action. Finally, the revised policy will expressly withhold to a level no lower than Assistant Secretary of Defense the authority to place an educational institution in a probationary status. The Department will invite the views of educational institutions and interested members of the public on these and other proposed changes to its policies and procedures.

Finally, beginning in January 2017, DOD will implement a new and enhanced MOU compliance framework, led by an internationally recognized expert in audit, compliance, and quality assurance/quality control. Under this new compliance framework, DOD will institute an industry-consistent risk assessment, combined with random sampling, to dramatically expand the number of educational institutions subject to compliance audits each year, while at the same time vastly reducing the amount of input required from each school. Under the new model, all 2,700 plus educational institutions that have signed an MOU to participate in the TA program will be assessed for risk against factors related to desired student and Departmental outcomes. These factors will be made public. Leveraging the services and expertise of its industry partner, DOD will annually conduct field surveys of roughly 10 percent of all participating educational institutions. These field surveys will provide “on the ground” insights into the operations of these educational institutions, and will be supplemented by a review of the institution’s web presence, self-assessments, after action reporting, and personal dialogue. This framework will expand DOD oversight to more schools, using standardized processes and criteria known, in advance, to all participating educational institutions. Although individual student complaints received via PECS will remain an integral part of the DOD oversight network, the new thirdparty compliance framework will enhance the Department’s capabilities to gather facts and information and impartially enforce MOU compliance. We believe this new framework will prove an improvement over our current efforts, pursuant to which we are able to review less than 1 percent of educational institutions each year. The tenets of this new compliance framework will be detailed in a process document that will govern the Department’s actions going forward.

Also central to this framework is a revised communication plan and an online tutorial that will enable representatives of educational institutions to bring themselves current on the requirements of the DOD MOU and their responsibilities for fostering compliance with the *Principles of Excellence*. The tutorial will employ scenario-based learning strategies to educate users about common misconceptions and pitfalls and how best to avoid them. Communication circulars and the compliance tutorial will be available to employees of all MOU partner institutions in the coming weeks.

The Department believes that the combination of these efforts will significantly improve its administration and oversight of the DOD Voluntary Education and TA programs. Our goal is to create a culture of compliance across all program stakeholders, such that participating educational institutions see the value in compliance

with program requirements, and cascade that value across our military student population.

We thank the Congress and the Members of this Committee for your continued support of our servicemembers and their families, especially in championing the services and benefits provided through the DOD Voluntary Education Program and TA. DOD is proud of our ongoing efforts to improve these programs with a view to providing our servicemembers with high quality educational opportunities and fulfilling our duty to serve as good stewards of the appropriated TA funding that facilitates these objectives.

Chairman MCCAIN. Thank you.

Does Ms. Barna or Ms. Bilodeau have any opening statements they would like to make?

Ms. BARNA. I do not, sir.

Ms. BILODEAU. No, sir.

Chairman MCCAIN. Thank you.

Ms. Bilodeau and Ms. Barna, the reason why we have you here is because you made decisions. You made decisions that directly affected this entire situation for which we're having this hearing. And I agree with Mr. Levine that we don't usually do that, but we don't usually have people at a GS-15 level making decisions that have the profound effect that they did.

Ms. Bilodeau, isn't it true that you participate in the nonpublic interagency task force targeting for-profit educational institutions, the aim of which is to, quote, "coordinate their activities against for-profits"? Is that true?

Ms. BILODEAU. Yes, sir.

Chairman MCCAIN. So, we have a nonpublic interagency task force that targets for-profit educational institutions, the aim of which is to coordinate their activities against for-profits. Nobody else, but against for-profits. And, through this task force, you share information and assist one another in the enforcement of Federal laws. Is that correct? Ms. Bilodeau?

Ms. BARNA. Well, sir, as Ms. Bilodeau's supervisor, would you mind if I interjected?

Chairman MCCAIN. Please go ahead.

Ms. BARNA. The Department does participate in the task force to which you've referenced. The Department has consistently raised within the members of the task force our objection to the name. The purpose of the task force is not to focus only on for-profit institutions, but rather on all institutions. And we've—

Chairman MCCAIN. Tell the—

Ms. BARNA.—made plain—

Chairman MCCAIN. Tell me—

Ms. BARNA.—our concern.

Chairman MCCAIN. Tell me another institution you have focused your attention on and placed on probation.

Ms. BARNA. I would have to ask Ms. Bilodeau for the other institutions. We have a number of them that we have placed on probation.

Chairman MCCAIN. Tell me one.

Ms. BILODEAU. Globe University, Minnesota Business School, Heald College.

Chairman MCCAIN. In fact, you—Ms. Bilodeau, you emailed your interagency partners to notify them of the probation decision so

these agencies could coordinate enforcement actions against the University.

Ms. Bilodeau, you drafted the letter that informed the University that it was on, quote, “probationary status.” And, Ms. Barna, you approved that letter. Is that correct?

Ms. BARNA. I did, sir.

Chairman MCCAIN. But, first Ms. Bilodeau and then Ms. Barna, who at that time made the decision to place the University on probationary status?

Ms. BARNA. Sir, I made that decision.

Chairman MCCAIN. And who did you consult?

Ms. BARNA. I consulted with my team, not at the time the decision was made, but in advance, as we were inquiring into the various allegations that had been brought forth about the University of Phoenix.

Chairman MCCAIN. And what information was that?

Ms. BARNA. We had received a complaint initiated when Ms. Bilodeau interviewed with what we thought was the PBS News Hour. At that time, she was talking about the Department’s efforts to implement the Principles of Excellence and to better govern our voluntary education programs. The interviewer brought forth a University of Phoenix Challenge Coin that also bore the departmental seals and asked Ms. Bilodeau whether or not she was aware of base access violations. Based upon that, we initiated an inquiry, as we always do. And Ms. Bilodeau began looking to the various services for information.

Our ability to focus that inquiry was certainly forwarded by the Reveal News article on the 30th of June that we believe to have been authored by the very same person who interviewed Dawn for the PBS News Hour.

Chairman MCCAIN. So, there was a news story and a article, and you then acted to place the University of Phoenix on probation.

Ms. BARNA. I did act, sir, after 4 months of inquiry between the publication of the June 30th Reveal News article and the issuance of the letter of probation.

Chairman MCCAIN. And by the time you issued the letter of probation, they had discontinued the Challenge Coin and had, on numerous occasions, sought to consult with you, which was not agreed to by you.

Ms. BARNA. I’m sorry, could you please repeat that——

Chairman MCCAIN. It’s a matter of——

Ms. BARNA.—last question?

Chairman MCCAIN.—record. It’s a matter of record that the University of Phoenix made several efforts—and I have the communications—to consult with you about these allegations, and you refused to consult with them. In fact, quote, “not at this time,” I believe was your exact response.

Ms. BARNA. Sir, I can’t speak for others, certainly, but I had no personal contact with the University of Phoenix or any of their agents, and have not had contact with them to this day.

Chairman MCCAIN. This—here’s the letter, right here, July 28, 2015, “Dear Assistant Secretary Williams, As the president of the University, we write to respectfully request a meeting with you and

your team to share and demonstrate what we have learned,” et cetera.

Ms. BARNA. Oh. Yes, sir. Rosemary Williams was one of our Deputy Assistant Secretaries of Defense.

Chairman MCCAIN. So, you were unaware of this request to meet?

Ms. BARNA. Yes, sir, I was not aware of that request until I was informed of it in the University of Phoenix’s 22 October response to the letter of probation.

Chairman MCCAIN. Aha. So, there’s no communication between you and Deputy Assistant Secretary Williams.

Ms. BARNA. In fact, there is extensive communication.

Chairman MCCAIN. Well, then why weren’t you aware of this letter and other attempts to outreach by the University of Phoenix?

Ms. BARNA. I can’t—

Chairman MCCAIN. In other words—

Ms. BARNA.—explain that, Senator.

Chairman MCCAIN.—Ms. Barna, anybody who’s going to take action such as you decided to take—and I don’t believe, frankly, that it was you alone, but I can’t prove it—at least you contact the people that you are placing on probation on the basis of a PBS News Hour and a article in a newspaper.

Ms. Bilodeau and Ms. Barna, I understand there is no document, none, that reflects that approval for the decision was ever sought or granted. Is that correct?

Ms. BARNA. Sir, when the letter of probation that Ms. Bilodeau proposed to sign was sent to me, I reviewed it, I consulted with—

Chairman MCCAIN. Who sent it to you?

Ms. BARNA. It came to me from Mr. Ed Pratt, who was the Chief of Staff of the Office of the Deputy Assistant Secretary of Defense for Military and Community Family Policy.

Chairman MCCAIN. For—again, Ms. Bilodeau and Ms. Barna, who, at that time, made the decision to place the University on, quote, “probationary status”? Who approved the letter?

Ms. BARNA. I did, sir.

Chairman MCCAIN. And that is your responsibility, and yours alone, to place a university on probationary status on the basis of the PBS television and a article in the—in some periodical, when the University of Phoenix had already taken action to correct it?

Ms. BARNA. Sir, it was my responsibility. Under the terms of the DODI, which I agree with Mr. Levine is unartfully drafted, the person acting as the—

Chairman MCCAIN. Was what, again? Inart—

Ms. BARNA. The DODI is unartfully drafted. And that is the—

Chairman MCCAIN. An unartfully drafted periodical puts—literally puts a—an institution out of business. An in artfully drafted—

Mr. LEVINE. The—

Chairman MCCAIN. I mean, it’s incredible.

Mr. LEVINE. Mr. Chairman, the DODI she’s referring to is not the article. It’s our Department of Defense Instruction. DODI is a—is an acronym there.

Chairman MCCAIN. Well, my time is long overdue, and I’ll go—and I will ask the indulgence of my colleagues, but, on the Chal-

allenge Coins, they had corrected it before you had acted, and there was numerous attempts, including this one, to try to resolve these issues. And, by the way, the letter in response was from Rosemary Williams, the Deputy Assistant Secretary of Defense, Military Community and Family Policy, a fairly responsible individual. “Dear Ms. Slottow”—those are the people from the University of Phoenix that wrote—“Thank you for your thoughtful letter. My sincere apologies for not responding in a more timely fashion. While I appreciate your desire to meet, I believe it is a bit premature at this time.” They refused to meet with them.

Mr. LEVINE. What time was that, Mr. Chairman?

Chairman MCCAIN. That was in August 2015.

Ms. BARNA. Mr. Chairman, I believe that would have been the time that our inquiry was ongoing.

Chairman MCCAIN. Well, with an ongoing inquiry, you ought to be able to talk to the people that are being inquired about. Here’s one on October 30th, 2015. Yeah. And so, on October 30th, you made the decision, even though you had—your people or your superior had refused to meet with the University of Phoenix.

Senator REED.

Senator REED. Well, thank you very much, Mr. Chairman.

Mr. Levine what form does this agreement take between the Phoenix University or any eligible institution and the Department of Defense? Is it a contract? Is it an agreement? Is it—

Mr. LEVINE. It’s a memorandum of understanding signed by the—both parties.

Senator REED. And—both parties—and within the memorandum of understanding, is it clear that those situations which triggered this notification to University of Phoenix would be inappropriate?

Mr. LEVINE. The memorandum of understandings provides that educational students—educational institutions seeking access to a DOD installation, quote, “will provide their request to the responsible education advisor, who will review and analyze those requests on behalf of the installation commander.”

Senator REED. So, in a case of access to installation, that was the—the memorandum clearly stated that they had to go through the education advisor.

Mr. LEVINE. It did.

Senator REED. With the use of Challenge Coins, they were specifically prohibited from using these types of devices—

Mr. LEVINE. Mr. Chairman, it’s my understanding that was not in the MOU. It’s—

Senator REED. Chairman—I’m the Ranking Member.

Mr. LEVINE. I apologize.

Senator REED. Go ahead.

Mr. LEVINE. Senator Reed.

Senator REED. Yeah.

Mr. LEVINE. I apologize. It’s my understanding that that was not in the MOU. It’s a separate DOD policy that precludes the use of the DOD seal because of the risks that it will create the appearance of official sanction.

Senator REED. Now, since the—this situation developed, you have developed procedures in which someone who’s being considered for probation is notified? Is that clear?

Mr. LEVINE. The procedures that we have—that are outlined in my testimony, as I say, that we will—we are now using for anybody who comes before us but are not yet official, because we have to go through Notice of Public Comment—those procedures call for a notice the party, an opportunity to respond, and the decision to be made at the Assistant Secretary level so that we'll be clear there is not a GS-15 and it's—the person who signs the letter will be the person who's responsible and accountable.

Senator REED. How many schools have been placed on probation in similar circumstances, going back—

Mr. LEVINE. So, there are two different categories of probation. And this—there are apparently—and I can turn to Ms. Barna or Ms. Bilodeau, but, as I understand it, there are a number of institutions that have been placed on probation when they have lost—they've lost their standing. They are no longer accredited or they're no longer qualified for the program. There are other institutions that are placed on probation in the nature of this, where we've identified problems that are correctable. And it's my understanding that there are four institutions that have been placed on probation in those circumstances.

Senator REED. Ultimately, the University of Phoenix was removed from the probation. And what caused that removal?

Mr. LEVINE. What Ms. Barna tells me is that, after the communication difficulties that they were having with the University of Phoenix, she appointed an SES to be the—essentially, the full-time liaison to the University of Phoenix. And once that—this was about a month after the probation—once that person was appointed, the communications improved, and they were able to work through the problems and reach agreement as to how they were going to address them, going forward.

Senator REED. There seems to be, you know, an issue with respect to communications and discussions back and forth. The Chairman has suggested the letters—he has copies of letters that were sent to somebody in DOD. But, you're implying that there was not a direct line of communication between Ms. Barna and Phoenix to resolve these problems until months after the problems were discovered and the probation—

Mr. LEVINE. Right.

Senator REED.—was imposed?

Mr. LEVINE. It appears to me that there were significant communication problems here. I—and so, that's why I asked the Chairman when the letter was he was referring to. I have heard my staff talk about feeling that there were communication problems on the other side, where we would apparently send the University of Phoenix a notice of a complaint and ask for their response, and not get a response that we felt was responsive.

I can't tell you the University of Phoenix was wrong in that case or that we were right. I can just tell you that it appears to me that there were significant communication problems here.

Senator REED. At the heart of all of this is the executive order and the implementation policies. I note that the statement of the president of the University of Phoenix, in his words, "Both Executive Order 13607 and a new postsecondary compliant system are integral parts of the Department of Defense Memorandum of Un-

derstanding outlining requirements related to participation in the voluntary education programs. The University of Phoenix supports each of these initiatives and taking—directs us to advocate for enhancements, improvements that help students.” So, apparently the University does support at least the overarching approach here. And I assume you’re in communication with them to get their advice about how better to implement it. Is that fair?

Ms. BARNA. Sir, yes, our communications have improved dramatically. In fact, they go—they’re doing very well in both directions. First, in the last several months particularly, Phoenix has really come back into the ranks, has called us to consult when there are questions, has appointed a new director of their military services department, and, in fact, called us to consult with that military director so that we could better inform him about the needs of the Department and our requirements under the MOU.

So, we believe that the situation has actually had a very positive effect on the relationship between the Department of Defense and the University of Phoenix.

Senator REED. Thank you.

Thank you, Mr. Chairman.

Chairman MCCAIN. Well, just to clear things up, you keep talking about communication difficulties. For the record, on July 28, the letter came from the University of Phoenix president asking—received notification of potential noncompliance. He asked for a meeting. The answer was—which was not provided initially to this committee, quote, “I appreciate”—from—and, by the way, a copy of it to what is—was sent to Ms. Bilodeau—quote, “While I appreciate your desire to meet, I believe it is a bit premature at this time. I do not want to close this communication without acknowledging your collective extensive service to our country through academic public service in uniform.” The question is, is why the committee didn’t receive this email in response to its request for documents.

Senator ROUNDS.

Senator ROUNDS. Thank you, Mr. Chairman.

Ms. Bilodeau, I understand why Active Duty servicemembers view for-profit colleges as a convenient and accessible way to earn their degree while they’re serving full-time. I also understand that there is an argument that some for-profit colleges prey on our servicemembers and offer education and degrees of questionable value. In your opinion as the chief of DOD’s Voluntary Education Program, what role do you see for-profit colleges playing in DOD’s strategic goals to educate our servicemembers?

Mr. LEVINE. Senator, could I respond to that?

Senator ROUNDS. You may.

Mr. LEVINE. I would say that we are concerned, not about for—some for-profit colleges that may have improper conduct, but some educational institutions, whether they’re for-profit or not-for-profit. I don’t want to rule out the case of potential abuse for not-for-profits. We see both for-profits and not-for-profits as providing a valuable role here, and we want to—and we want them to comply with our policy. Obviously, we want them to provide quality products, but we don’t believe that there’s any inherent reason to believe that a nonprofit is providing a better product than a for-profit. We want a quality product.

Senator ROUNDS. As a follow up, then—and I would direct it, then, to you, Mr. Secretary—and that is, Do you differentiate between services provided by a for-profit versus those provided by a not-for-profit?

Mr. LEVINE. I do not, Senator. And the one—as I indicated earlier, in the one interagency meeting that I attended on this issue, that was the—that was one of the two major points I made, was that we don't, in the Department of Defense, want to distinguish between for-profits, not-for-profits. We want to distinguish between a good product and a bad product.

Senator ROUNDS. Of the number of institutions that have been providing services—and I know that there's over 2700—you've indicated that there are four that have been placed on probation. How many of those are for-profit, and how many of them are not-for-profit?

Ms. BILODEAU. I would have to check the status, the for-profit status. Phoenix is a for-profit. Heald College is a for-profit. I'm just not sure if Globe University, Minnesota Business School are non-profit or for-profit, sir.

Senator ROUNDS. In your review of their activities, do you differentiate? Are you aware of whether or not they're a for-profit or a not-for-profit when you review them?

Ms. BILODEAU. When we pull their file, we do see that. However, the MOU is—does not—doesn't consider that. Everyone signs the same agreement. And so, the rules apply consistently, regardless of sector.

Senator ROUNDS. It seems as though there—there most certainly seems to be a crossover between you're—in your position, serving in both the interagency task force on these for-profit operations versus your position here within DOD in reviewing and looking at the services being provided. Did—were the two connected? And I'm asking, Does it come with the job, or was it specifically requested? Was one before the other?

Mr. LEVINE. Senator, it comes with the job. It's part of all of our jobs in the Department of Defense that, when we're called upon to—the Department of Defense is called upon to participate in an interagency task force, we look for people who serve in the line jobs that work on that. We don't have somebody—we can't afford to have somebody who's staffed just to working on an interagency task force of that kind.

Senator ROUNDS. And so, the individual who was responsible for the voluntary educational programs in the Department of Defense is also the individual identified as being responsible on a task force specifically to investigate the for-profit organizations?

Mr. LEVINE. So, the way—and I—maybe Ms. Barna could elaborate on this, but the way that it would typically work is that I, if I were the Under Secretary at the time, would be called upon to designate somebody who is expert in that area who could participate in an interagency task force. And I would have to look to where the expertise is in my organization.

Senator ROUNDS. So, most certainly, then, there is a differentiation between the profits and the not-for-profits if you are also on a task force which is targeting the for-profit organizations. Most

certainly there is a difference, and you identify and you separate them out.

Mr. LEVINE. Well, as Ms. Barna indicated, we don't agree with the idea that this task force should be targeting for-profits. We believe that—and, as I indicated, when I participate in interagency meetings, my point has been——

Senator ROUNDS. I—Mr. Secretary, I——

Mr. LEVINE.—we don't want to differentiate.

Senator ROUNDS.—I understand it. And I think what we're getting at is, is that, whether or not we agree with it, we're talking about, de factor, what has been occurring, and it seems to me that that is the basis for it. The Chairman's expressed concern, and seems to me that your suggestion that you believe that there are things that could be changed—and I hope you have the resources and the ears available to make those recommendations, but mostly certainly there seems to have been a connection between DOD and the interest in an interagency task force targeting for-profit institutions.

Mr. LEVINE. So, Senator, I appreciate that, and what I would say is, I can't speak for what other agencies do. Within the Department of Defense, we work very hard to make sure that we do not distinguish on that basis and we don't target on that basis. I can't tell you what other agencies do.

Chairman MCCAIN. But——

Senator ROUNDS. Thank you, Mr. Chairman.

Chairman MCCAIN. But we can know that, Senator, that there is a task force that is designed and in operation, without any authorization from Congress, that is targeting for-profit institutions. Facts are stubborn things.

Before I turn to Senator Manchin, I'd like to welcome back to the committee the Senator from Virginia, and congratulate him on waging an honorable campaign of which he can be very proud.

Senator MANCHIN. Hear, hear.

Chairman MCCAIN. And I'm probably the only person here who can relate.

[Laughter.]

Chairman MCCAIN. I thank you, Senator Kaine, and welcome you back.

Senator Manchin.

Senator MANCHIN. Following up on what the Chairman just said, it's an executive order. If this executive order is rescinded, what does it do to y'all's operation? Because you're operating under an executive order, correct?

Mr. LEVINE. We have a Department of Defense Instruction which establishes our policy. And we would have to look at the way that Department of Defense Instruction is drafted. And I don't know to what extent it incorporates by reference things that are in this executive order or whether it has its own independent standard that may be consistent with the executive order separately established. So——

Senator MANCHIN. That would depend on whether——

Mr. LEVINE. Yeah.

Senator MANCHIN.—you would continue what you're doing——

Mr. LEVINE. Sure.

Senator MANCHIN.—or if you do it differently, or if you just abandon it.

Mr. LEVINE. Sure. But, a new administration obviously would have the authority not only to reconsider the executive order, but also to reconsider the Department of Defense Instruction.

Senator MANCHIN. Sure.

Follow-up on that. You know, this has been going on for some time, and I have—I have one large institution in my State also, and we're watching everything very carefully. They believe they've been targeted also. Anybody in the private arena believes they've been targeted. But, when I see—you've—you all have hit some pretty lofty groups, here. Florida State University, Georgetown, University of Maryland, University of Miami, Xavier, Rutgers are in violation. These are all for-profits. Why—these are not-for-profits.

Mr. LEVINE. Nonprofit.

Senator MANCHIN. I'm sorry. And your for-profits, you had the two right now that you have under concern there that—I'm having a hard time understanding, unless you all are looking at, basically, a for-profit, have basically targeted the military and basically built their business model around the military and the money that comes from the G.I. Bill and different assistance that we give. Is that what targets that—is that what flags it for you all?

Mr. LEVINE. So, Senator, I would say a nonprofit could do the same thing. You could have a nonprofit education institution that—

Senator MANCHIN. But, all these are in violations—

Mr. LEVINE. Sure.

Senator MANCHIN.—Mr. Levine. I know that. They're all in—so, they've done something wrong.

Mr. LEVINE. Right.

Senator MANCHIN. But, basically, they have a wide scope of educating a lot of different people—

Mr. LEVINE. Sure.

Senator MANCHIN.—in different arenas. It seems like, for the for-profits, that basically that you all have homed in on are the ones are the ones that strictly have built their business around military. Is that correct? Would that be a fair evaluation?

Ms. Barna?

Ms. BARNA. Sir, I believe it's probably just a matter of the overlapping of the facts. Those who do an extensive business with Federal education funding, either through the G.I. Bill run by the VA or through our Tuition Assistance Program, are likely to deal with a number of military. And so, I think it's just a matter of the fact that we're dealing with providing educational funds and opportunities to our servicemembers, and that is the population that, because they are nontraditional students, have found an educational home at places like AMU [American Military University] or the University of Phoenix.

Senator MANCHIN. When you have them in violation of MOU, not-for-profit and for-profit, did they get the same type of punishment, if you will? Is it the same type of punishment adhered both to non- and—for-profit and nonprofit?

Ms. BARNA. Sir, in my view, I would not distinguish between the two in determining an appropriate action on allegations of infractions.

Senator MANCHIN. So, the—some of the more prestigious—let's say Georgetown University—you're preventing them to have access to bases?

Ms. BARNA. I do not know if Georgetown has sought direct access to bases. I do not know whether we have received a complaint about Georgetown not complying with those criteria.

Mr. LEVINE. But, when we—

Senator MANCHIN. Where—

Mr. LEVINE.—when we get a complaint, we would refer it to—we would refer it for the same kind of review. We would refer it back to the institution—

Senator MANCHIN. And they were in violation, correct?

Mr. LEVINE.—whatever the institution was, and tell them that they're in violation—

Senator MANCHIN. Yeah.

Mr. LEVINE.—ask for their response, look into it in the same way.

Senator MANCHIN. And I think what we're all concerned about is that, basically—did the nonprofits get put on violation—were they notified?

Ms. BARNA. Yes, sir.

Senator MANCHIN. So, they were notified, but the nonprofits—I mean, the for-profits were not notified.

Mr. LEVINE. So—

Ms. BARNA. No. All were notified, sir.

Mr. LEVINE. Senator Manchin, if I could, I would distinguish between the individual allegations, which for-profits and nonprofits are notified of and given an opportunity to respond to, which is where I think we're a little bit better, and then the probation decision, which the non—which, in this case, University of Phoenix was not given advance notification of. So, I guess the theory in the Department at the time was, "Well, you've been notified of each of these violations, and we don't like your responses, therefore we're going to put you on probation." As I've indicated, I don't think that's an adequate process.

Senator MANCHIN. Right.

Mr. LEVINE. I think if we don't like your responses—

Senator MANCHIN. Were the non-for-profits—were they handled the same way? Were they put on probation?

Mr. LEVINE. As Ms. Bilodeau indicated, there are a couple of institutions that have been put on probation, where she doesn't know whether they're for-profit or not-for-profit, out of the four, so that there are two for-profits that have been put on probation and two where she doesn't know. So, we'd have to check and see whether those are for-profits or non-for-profits. We just don't know at this point.

Chairman MCCAIN. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair.

Thank you all for being here.

I—Ms. Barna, I was just curious in—how long have you been in your current position?

Ms. BARNA. Well, sir, I have moved the—around the Department of Defense quite a bit. I've been with the Office of Personnel and Readiness since April of 2014. And it was in that position that I made the decision in October of 2015 regarding the University of Phoenix.

Senator TILLIS. And to me—I tend to share the sentiment of the Chair and my colleague Senator Rounds that there is a general sense that there's a targeting. The Interagency Task Force is one example of that. I'm not going to get into a debate with you all over whether or not your Department's targeted. But, do you know of any other example for a not-for-profit that has been put on probation before given notice ahead of time?

Ms. BARNA. Sir, again, I think it would be important, as Mr. Levine has done, to distinguish between notices of individual infractions.

Senator TILLIS. Yeah.

Ms. BARNA. When we receive information——

Senator TILLIS. Yeah.

Ms. BARNA.—one of the first——

Senator TILLIS. Yeah, I get that.

Ms. BARNA.—entities that we contact——

Senator TILLIS. I'm talking about—well, let me put it a different way. Can you think of any specific circumstance where a not-for-profit has been dealt with the way that University of Phoenix was when they ultimately received probation, the nature of the communications?

Mr. LEVINE. So, Senator, as Ms. Bilodeau has indicated, there are—we believe there are four institutions that we've placed on probation in this type of circumstance. My presumption is that none of them received advance notice. My view is, they all should have received——

Senator TILLIS. Yeah.

Mr. LEVINE.—advance notice.

Senator TILLIS. And, Mr. Levine, I think you referred to the process as “crappy.” And I think Ms. Barna may have said it was inartfully worded. What's changed since you've come in? I think you've said 8 months. What has changed to make it less likely that something like happened to University of Phoenix would occur again?

Ms. BARNA. Sir, as Mr. Levine indicated, any sort of formal procedures that we put out must go through the Federal Register's Notice and Comment. So, we are crafting revisions to procedures. But, in the meantime, we are going to employ those procedures, because we believe they give greater due process to the affected educational——

Senator TILLIS. Thank you.

Ms. Barna, you mentioned that—I think, that the relationship with University of Phoenix has improved. And you mentioned, I believe, that they have hired someone who's—would you go back and repeat what steps they've taken that you think have improved the relationship with the Department?

Ms. BARNA. First, they have been much more open with us about coming forward when they have questions about the MOU and

what they should do. And they do that in advance. And so, we have a very good two-way——

Senator TILLIS. Did you mention that they've hired somebody or put somebody in a position also? Was it you that mentioned that in your testimony?

Ms. BARNA. Yes, sir, I did. They've hired a Director of Military Services, particularly to address the growing population of military students. And they reached out to us and asked that we consult with that Director of Military Services to ensure that we set up good lines of communication there——

Senator TILLIS. Okay, thank you.

Ms. BARNA.—and that——

Senator TILLIS. Secretary Levine, you mentioned 200- and—was it 260-some-thousand people participating in the program?

Mr. LEVINE. Yes, sir.

Senator TILLIS. And you said 80 percent of them go through programs, do not receive a certificate or a degree. Is there a split—are you referring to the for-profit, not-for-profit, or both?

Mr. LEVINE. Both.

Senator TILLIS. Okay. Do you have any data that suggests that one is more successful with getting someone a degree or a certificate than the other?

Mr. LEVINE. I do not.

Senator TILLIS. I think that would be very helpful in this discussion. I'd be interested in getting that from the Department, if we can, or if you could point us in the right direction.

[The information referred to follows:]

In fiscal year 2015,

Private, For-Profit: 242 Schools; 114,400 TA Participants; 10,081 TA Graduates; 9 percent Military Students Graduate*

Private, Non-Profit: 595 Schools; 68,167 TA Participants; 6,946 TA Graduates; 10 percent Military Students Graduate*

Public: 1,247 Schools; 103,196 TA Participants; 7,644 TA Graduates; 7 percent Military Students Graduate*

* Percentage of Military Students Graduate is an estimate obtained by dividing the number of TA Participants in the most recent year by the number of TA Graduates reported in that same year.

Senator TILLIS. But, let me get back to a basic—the reason I asked the question of Ms. Barna about hiring another employee—I'm from North Carolina. I would argue we've got one of the best university systems in the country. That university system has 17 institutions. It spends over \$1 billion a year in regulatory compliance. And my guess is, some amount of that money is going to make sure that they don't get put on probation. When you add to that other institutions, like Duke, a good B-plan school down in North Carolina if you can't get into Chapel Hill——

[Laughter.]

Senator TILLIS.—or Wake Forest, the regulatory burdens that are placed on these institutions as a result of the way that they're dealt with, the way that University of Phoenix was dealt with, increases cost and prevents us from putting more money into actually educating these folks at the—so that we can make sure we don't get placed on probation or we don't get deprived—or denied some sort of funding that we received in the past. The—this is just one symptom of a problem in the Federal agencies that relate to edu-

cations or institutions of higher learning that we've got to look at and regulate. We've got to get to a point to where we know that—whether it's for-profit or nonprofit, they're producing a good product and good outcomes. That should be done across the board, without regard to nonprofit or for-profit status. But, this heavy handed sort of interaction with these universities, as the University of Phoenix is just one example, is actually taking us further away from providing more resources for students to get those certificates and to get those diplomas. And I, for one, think that we should look at this process, a number of other ones across various Federal agencies, and ask whether or not they should exist in their current form, or at all.

Thank you.

Mr. LEVINE. Senator, if I could—Mr. Chairman, could I briefly respond to that?

Chairman MCCAIN. Yeah.

Mr. LEVINE. I agree with you that we should be looking at regulatory burdens we impose across the board. The countervailing fact that we have here is, we're spending 600—500—600 million dollars a year, we have 250,000 servicemembers who are relying on this product, and we need to try to come up with some way of ensuring that they're getting their value out of it. I'm not going to tell you we've answered it in the best possible way, but we are, in good faith, trying to do that. And the rules that we impose—we're not trying to impose rules that are arbitrary or crazy or to make it—make your life miserable. We're trying to figure out a way that we can get to a solution where we can give our servicemembers assurance that they're getting their money's worth out of their products—or we're getting our money's worth out of the product.

Chairman MCCAIN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. And I want to thank you, Mr. Chairman, for having this hearing, which gives us the opportunity to address a broader point that I think has been mentioned.

The Ranking Member, Senator Reed, alluded to it in his remarks, namely that the 90/10 rule and the loophole that enables for-profit institutions to count VA and DOD educational benefits as non-Federal money, in effect, makes servicemen and women, and potentially veterans, more vulnerable. They are, as the Ranking Member said, in effect, people with targets on their back.

Would you agree with that?

Mr. LEVINE. Senator, we agree that—we share the concern—and it's not limited to for-profits, I'll be clear again—but, we share the concern that, given the way this program operates, there are some actors out there who may perceive our members as being dollar signs—

Senator BLUMENTHAL. Well, the—

Mr. LEVINE.—rather than people.

Senator BLUMENTHAL.—the loophole applies to for-profit colleges, correct?

Mr. LEVINE. You're the expert, not me. I'll take your word for it. I would not say that the question of financially benefiting from our Tuition Assistance Program and from the Student Loan Program is limited to for-profit institutions.

Senator BLUMENTHAL. And, in your judgment, are the recruitment abuses still ongoing?

Mr. LEVINE. We don't have—we are doing what we can to control it. We don't have—we can't say that we've eliminated student—recruitment abuses, no.

Senator BLUMENTHAL. So, this is still a problem. And we need to grapple with this problem, because there are literally hundreds of millions of dollars in taxpayer money at stake, correct?

Mr. LEVINE. Yes, sir.

Senator BLUMENTHAL. And, by the way, I know there's been a lot of criticism of the action with respect to the—to Phoenix, but, at the time, that action was commended by a group of veteran service organizations, was it not?

Mr. LEVINE. Yes, sir.

Senator BLUMENTHAL. And, in fact, with the Chairman's permission, I'd like the October 27th letter entered into the record, Mr. Chairman, written by a number of the VSOs [Veterans Service Organization] at that time.

Chairman MCCAIN. By who?

Mr. LEVINE. Veterans service organization.

Chairman MCCAIN. Without objection.

Senator BLUMENTHAL. Thank you.

[The information referred to follows:]

October 27, 2015

The Honorable Ashton Carter
Secretary of Defense 1000
Navy Pentagon
Washington, DC 20350-1000

Dear Secretary Carter:

We write to thank you and your staff for the Department's recent action to enforce its Tuition Assistance Memorandum of Understanding (MOU) with the University of Phoenix. The MOU is the Department's main tool for implementing Executive Order 13607 and its directive to protect service members from deceptive recruiting, including surreptitious recruiting on military installations.

In these difficult financial times, protecting the integrity of the Tuition Assistance program is essential to preservation of the program and its goal of military readiness and professional development for our men and women in uniform. In this context, the Department's action to enforce the MOU is a prudent measure, and we feel more needs to be done to protect the integrity of the program. Failure to take swift and serious action against violations of the MOU harms service members, taxpayers, and the program itself, and sends the wrong message to other MOU signatories about the acceptability of violations.

The Department's investigation concluded that "the frequency and scope" of the University's violations was "disconcerting," including "transgression of Defense Department policies regarding use of its official seals or other trademark insignia and failure to go through the responsible education advisor for each business related activity requiring access to the DoD installations." The Department's [letter](#) to the University also raised concern that "several additional provisions" of the MOU may have been violated if allegations are substantiated about deceptive marketing, recruiting, and billing of U.S. military personnel raised in the law enforcement inquiries of the U.S. Federal Trade Commission and California Attorney General. We also would draw to your attention similar allegations that also, if substantiated, would violate provisions of the MOU, raised in ongoing investigations of the Attorneys General of Delaware, Florida, and Massachusetts; the Enforcement Division of the U.S. Securities & Exchange Commission; the Mid-Atlantic Region of the U.S. Education Department's Office of Inspector General; and the whistleblower suit brought by University of Phoenix military recruiters filed in the federal district court in Kentucky.

Although signatories to the MOU promise to eliminate unfair and deceptive marketing and recruiting, such practices continue. For example, many of our

organizations are helping service members and veterans who experienced deceptive recruiting, and nearly 1,000 of these attended the University of Phoenix. Their experiences over the past decade, and through 2015, demonstrate a pattern consistent with the allegations made by current law enforcement investigations. Service members' complaints regarding the University of Phoenix tend to fall into three categories: (1) service members who were signed up for loans without their knowledge or permission, after being promised they would incur no loans; (2) service members who were misled about the cost and tuition increases at University of Phoenix; and (3) service members who were misled about the accreditation and transferability of University of Phoenix credits. Below is a small sampling of complaints about the University of Phoenix from service members who used Tuition Assistance. The first student attended the University as recently as 2015:

"I was told these credits would transfer anywhere nationwide but as I begin my transition from active duty I found out they will not transfer to the schools in my home state. I wasted my time and 15 credits for nothing." – Cody Edie, U.S. Marines E-4

"I was told by University of Phoenix that I would be eligible for grants that I did not have to pay back. I came to find out they enrolled me in loans and now I cannot afford the payments." – Erin Potter, U.S. Army E-5

"I attended University of Phoenix to attain my bachelors degree. I racked up close to \$20,000 dollars in debt to attain my degree. I feel they targeted me for my military student aid. I struggle every month paying back the student loans I could have avoided. I was shot twice in Afghanistan by shrapnel from RPGs." – Dennis Chamberlain, U.S. Army O-3

Because the Department's action affects only prospective students, we also urge you to alert service members currently enrolled at the University about the probation and current law enforcement investigations, and remind them about the availability of the Department's complaint system. Doing so would aid those students and enhance the Department's ability to identify MOU infractions. As you may know, the University was required by SEC rules to notify its investors of these actions; current students deserve to be informed as well.

We thank you for your efforts to protect the integrity of the Tuition Assistance program and to protect service members from deceptive recruiting practices. We hope the Department will continue to take action against violations and consider that reinstatement following a short probation could indicate to other MOU signatories that violations are met with little repercussion.

Sincerely,

Air Force Sergeants Association
 American Association of State Colleges and Universities
 American Federation of Labor – Congress of Industrial Organizations Association
 of the U.S. Navy
 Blue Star Families
 Campaign for America’s Future
 Children’s Advocacy Institute
 Consumer Action
 Consumer Federation of California
 Consumers Union
 Empire Justice Center
 Higher Ed Not Debt
 Institute for Higher Education Policy
 Iraq and Afghanistan Veterans of America
 Leadership Conference on Civil and Human Rights
 League of United Latin American Citizens
 National Association of Consumer Advocates
 National Consumer Law Center (on behalf of its low-income clients)
 Paralyzed Veterans of America
 Public Law Center
 Student Debt Crisis
 Student Veterans of America
 The Education Trust
 The Institute for College Access & Success
 University of San Diego Veterans Legal Clinic
 Veterans Education Success
 Veterans for Common Sense
 Veterans Student Loan Relief Fund
 VetJobs
 VetsFirst, a program of United Spinal Association
 Vietnam Veterans of America
 Working America
 Young Invincibles

cc: Chairmen and Ranking Members of the Senate and House Armed Services and
 Veterans Affairs Committees

Senator BLUMENTHAL. The solution to a lot of this problem, then, would be closing that loophole, correct?

Mr. LEVINE. Senator, that’s not within the ambit of the Department of Defense. It’s not our program. So, I listen to you and Senator Reed with sympathy, but it’s not a—it’s not an issue on which the Department of Defense currently has a position.

Senator BLUMENTHAL. Why not?

Mr. LEVINE. Because it’s the Department of Education that—and it’s those departments that run that policy. So—

Senator BLUMENTHAL. But, American servicemen and—women are the ones who are walking around with targets on their back.

And I don't mean that literally. I realize that hyperbole sometimes can get us in trouble, but they are, financially, targets.

Mr. LEVINE. I understand what you're saying, and all I can tell you is, I'm not aware that Department of Defense has taken a position on that issue.

Senator BLUMENTHAL. Let me ask you, before my time expires—the University of Phoenix was put on probation in October 2015, correct?

Mr. LEVINE. That's correct.

Senator BLUMENTHAL. And then it was removed from probation on January of 2016.

Mr. LEVINE. That's my understanding, as well.

Senator BLUMENTHAL. What was the reason that it was removed from probation?

Ms. BARNA. Senator, I can speak to that. After months of working with the University of Phoenix, after numerous productions of documents on their part to show what they were actually doing with regard to their workforce, disclosing their internal practices, I felt confident that the University of Phoenix was both cognizant of the rules and most willing to comply, going forward. In addition to removing them from probation, however, I mandated that they be placed on a year of enhanced monitoring. And this is to ensure that our communication efforts in the year following the probationary period continued to be strong and very close and very collaborative.

Senator BLUMENTHAL. My time is about to expire. I just want to reiterate my strong feeling. I don't know how many of the committee members share it. But, we are the Armed Services Committee. We have a responsibility, I think, to assure that servicemen and women are not targeted, are not recruited as a result of abuses and other kinds of practices that exploit them. And I hope that the Department of Defense will take its responsibility, perhaps, seriously, as well, in this regard. I realize that education is not, to quote you, "in your wheelhouse," but I think the welfare of our servicemen and women is.

And I want to thank Holly Petraeus for her work in this area, and others who have been working in it. And I want to thank you, Mr. Levine, for your very forthright testimony, as well as your colleagues, today. Thank you.

Thanks, Mr. Chairman.

Mr. LEVINE. Thank you, Senator.

Chairman MCCAIN. Senator Ayotte.

Senator AYOTTE. Thank you, Chairman.

I wanted to ask a question about—so, as I understand it, a total of 16 colleges and universities actually violated the use of Challenge Coins. And—but, yet none of them were put in the same status as University of Phoenix: suspended. Why is that? It seems—but, that University of Phoenix was singled out for a practice that many other colleges and universities were not treated the same, even though they made the same types of violations.

Mr. LEVINE. Senator Ayotte, if you want more detail, Ms. Barna or Ms. Bilodeau could respond, but I believe that the answer is that we don't suspend or put anybody on probation because of a single

violation. It's accumulation of a number of violations that lead to that remedy.

So, I don't believe University of Phoenix would have been suspended for the Challenge Coins, alone.

Senator AYOTTE. But, it certainly was cited in the decision to—

Mr. LEVINE. So, yes—

Senator AYOTTE.—suspend it.

Mr. LEVINE.—there were other things cited. And I'd particularly point to the base access issue, which, to my lights, is more serious. I understand there were also a number of complaints about University of Phoenix—19, I think, of which 6 were found to be unsubstantiated, but 13 were found to be substantiated, which go to broader practices. So, there was a broader concern about University of Phoenix, with a number of exchanges of emails and letters about potential violations.

Senator AYOTTE. But, you can understand, when you hear Ms. Barna talk about having sat down with—

Chairman MCCAIN. If the Senator will indulge me just for a second. There was 13 complaints from an estimated 12,000 military students who were attending.

Senator AYOTTE. So, 13 out of 12,000.

Mr. LEVINE. Senator, the way I view it is a—yes, it's 13 out of 12,000, but what we do with the complaint, and—what we should do with the complaint anyway—and again, I would turn to my colleagues here to talk about whether we did this in this case—but, what we should do with the complaint is look at it to see whether it reveals a practice. And if it reveals a practice, then it's a problem even though the complaint came from one individual.

Senator AYOTTE. But, in this case, just—as I understood the response of Ms. Barna to Senator Blumenthal is that there was a discussion with University of Phoenix. They produced documents. There was a back-and-forth that resulted from the date of October 2015, where they, without being notified, get the suspension and then, going forward to January of 2016, you take them off suspension because you've reviewed their practices and looked at their documents and felt it was appropriate to take them off. It seems like the total opposite approach toward how you would treat any institution under the circumstances of the fact that you would not engage in a discussion with them, that, even when the University reaches out, that you wouldn't sit down and have that in advance of doing something as dramatic as suspending them. And also, all the servicemembers that receive, obviously, education services from them, that puts them in a position where they're wondering about the education services that they're currently receiving, as well. So, we also have to think about the impact of the people that are being served, here.

Mr. LEVINE. So, Senator, two things. First of all, with regard to each of those violations, with regard to each of those complaints, University of Phoenix was notified of it and given a—an opportunity to respond. So, there was some discussion before the probation. That's the first point.

The second point is, I agree with you, they should have been notified, they should have had an opportunity to respond, there

should have been discussions specifically of the probation before that took place.

So, I don't agree that there was no discussion. There was discussion. But, I still don't think our process was right. I think our process should have provided for notice in advance, and I've made sure that it will provide for notice in advance in the future.

Senator AYOTTE. Where—

Chairman MCCAIN. Could I just interrupt again?

Senator AYOTTE. Sure.

Chairman MCCAIN. It's on the record. On July 28th, the president of the University asked to discuss this issue, and the response was, "While I appreciate your desire to meet, I believe it is a bit premature at this time." They did not honor their request to meet on the issue.

Mr. LEVINE. And, Mr. Chairman, I understand that, and certainly a request to meet should have been honored. But, I don't think that means there was no communication. There was communication.

Senator AYOTTE. Mr. Levine, the President's executive order, where is the status of the implementation of the specific tasks that are identified in the executive order? And what's the status now, going forward?

Ms. BARNA. Senator, the executive order has been implemented in our Department of Defense Instruction. The executive order is very aspirational. It speaks to our intent to eliminate unfair, misleading, or deceptive practices, to improve the requirements, to enhance the requirements for base access, particularly.

And so, we have implemented that through the guidance that we have in our Department of Defense Instruction and in the Memorandum of Understanding that each educational institution signs with the Department of Defense.

Senator AYOTTE. Even though some of the MOU, for example, didn't incorporate issues as specific as a Coin, for example.

Ms. BARNA. So, we view the Coin as a deceptive or misleading marketing practice, in that it allows the recipient of the Coin, or it fosters in them a belief—

Senator AYOTTE. But, my only point is, that was not contained specifically with the MOU, correct? It was within the DODI?

Ms. BARNA. It's—it is not specifically in the MOU, and it's also not specifically in the DODI. It was the subject of numerous advisories that we put out to all institutions well in advance, that said, "Look, we consider the use of these Coins to be misleading and inappropriate, and you must withdraw your use of them."

Mr. LEVINE. Senator, that's not just an issue that comes up in the context of this program. The use of DOD symbols for marketing purposes is something that we police up through the Office of General Counsel in other circumstances, as well.

Senator AYOTTE. It just strikes me as that there was a very lack of communication here in a way that has pretty significant implications.

Mr. LEVINE. Again, I'm not going to disagree with you on that, because I—as I've said, I don't think the process was as it should be.

Senator AYOTTE. Thank you.

Chairman MCCAIN. Senator King.

Senator KING. Thank you, Mr. Chair.

It seems to me we—this has been a very illuminating hearing. I appreciate it. And we have established, number one, a policy question, which is protecting the taxpayers and the students from abuse, no matter what the institution is. And let me ask a question directly.

Mr. Levine, to your knowledge, was there any particular targeting of for-profit schools in this process?

Mr. LEVINE. Not by the Department of Defense.

Senator KING. And so, your concern was simply the students, regardless of what the institution was.

Mr. LEVINE. That's correct.

Senator KING. The—but, we've also identified a process problem, which you have acknowledged, that there was an investigation between these news reports and the probation, but not specific interaction with the University with regard to the likelihood of probation. Is that correct?

Mr. LEVINE. That's correct.

Senator KING. And you've acknowledged—Ms. Barna, do you acknowledge that that was a process problem?

Ms. BARNA. I absolutely do. I agree with Mr. Levine in this regard, Senator.

Senator KING. And you talked about the conversations you had with the University after the probation, and that was what—University of Phoenix—and that was what led you to take them off probation. I would assert that that—those discussions should have taken place beforehand. And I take it you agree with that.

Ms. BARNA. I do, Senator.

Senator KING. Thank you, Mr. Chairman. I have no further questions.

Chairman MCCAIN. Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chair.

I'd like to ask the panel—you know, the—13 complaints out of 12,000 seems—that's a 0.1 percent complaint rate—0.1 percent. I'd like to broaden the discussion a little bit, for any and all of you. Why do you think servicemembers choose to attend universities, or participate in universities like the University of Phoenix? There's a lot of discussion, and I've seen it in the halls of Congress, about, you know, for-profit universities. Do you believe that our servicemen and women want to attend universities like this because of aggressive or predatory marketing, or is it more as—Ms. Bilodeau, you've been quoted as saying “because of the convenience of its online classes, which allow servicemembers to continue their studies when they're deployed or in a new location or on Navy ships.” What is it? Why do you think so many of our servicemen and women do this?

Mr. LEVINE. Senator, I think that servicemen and women participate in these programs because they want to better themselves, they want the education they can get out of them, they want to—they want the opportunity that—for advancement both within the service and once they leave the service. I think that's the overwhelming reason why servicemembers participate. What we need to do, as a Department, is to make sure that, when they partici-

pate, they're getting a quality product, so they're getting what they—what they hope to get and what they aspire to get when they enter the program.

Senator SULLIVAN. Well, in my experience, it's because of the convenience, but also because our servicemen and women want to better themselves. I was deployed on a U.S. Navy ship many years ago, and a lot of the servicemembers there were taking classes from a university called the Central Texas College. And they were doing it because the—you can't go to class when you're on a ship somewhere in the South China Sea, but you want to better themselves.

So, I just think that a lot of the focus has been on this predatory aspect of certain—we certainly don't want abuse, but we also want to make sure that the servicemen and women who want to better themselves have that opportunity. It seems to me that universities like the University of Phoenix or others who are trying to provide that, we want to encourage that.

Mr. LEVINE. Senator, we agree with you. I think that more than 80 percent of the education that goes through our Voluntary Education Program is online training. So, that is the predominant mechanism, because obviously that's what works for servicemembers who are as mobile as they are and have the demands that they do in their professional lives.

Senator SULLIVAN. So, what would happen to the 12,000 members who are participating in the University of Phoenix programs if that program were permanently terminated? What would happen to those men and women who are serving—or who are participating in that?

Ms. BARNA. Well, sir, first, when we put the University of Phoenix on probation, we did make it very plain to them, one, the mere fact that the University of Phoenix was on probation did not prohibit servicemembers from enrolling in Phoenix classes. It was simply that we were not going to use tuition assistance to subsidize their attendance. Furthermore, all students who were already enrolled in Phoenix academic programs would be allowed to continue to receive instruction. It was called—what we call “teaching out.” And so, Phoenix would be permitted to continue to teach, to continue to instruct all of the students that were currently enrolled through the end of their academic programs.

The two constraints on Phoenix during the period of probation were that they could not enroll, under tuition assistance, new servicemembers; and, two, that their ability to access bases was further limited, such that only if they were actually coming on post to teach a class or to provide counseling to a student would they be authorized to access the base. Those were the two, sort of, results of the probationary decision.

Senator SULLIVAN. Right. But, you didn't answer my question, which was, If the—if there was a DOD decision to permanently terminate, what would happen to the students?

Mr. LEVINE. So, that's hypothetical, but I think that we could have presumably provided the same kind of phaseout that we've provided with the ability to teach out so that you could continue to instruct current students. We have had the problem—and some of it may be on us for putting people on—for terminating people,

but also because of—we have had the problem of companies that have gone out of business and left our students in the lurch. Some of that is on them. Some of them may have—may be on us. I can't tell you for sure. But, we have had that problem. And students have been left in the lurch. That's one of the things that we see a need to try to protect our students from, frankly.

Senator SULLIVAN. Let me just—I just want to echo the point that Senator Tillis made about over-regulation. For me, I think that the executive branch has been over-regulation—over-regulating whole swaths of the United States economy, university—to include universities. At what point—is there a point where too—where—is there such thing as too much regulation with regard to our educational system? And have we reached that point with regard to the Tuition Assistance Program? And if we haven't, what is that point? And I'm asking that, again, because—you know, my initial question was about access. I believe that our military members are accessing these kind of programs, not because of predatory practices, but because they want them, because they need them. At what point are we over-regulating this program to the degree that we're harming the people it's supposed to benefit?

Mr. LEVINE. So, Senator, first, I agree with you that we always need to look at what we're doing, in terms of regulation, and figure out if there are more streamlined and less burdensome ways that we can do things. What I would say, though, is that this program is different from where we're regulating the private sector, as such, because this is a case where we're spending the taxpayers' dollars. It's our students, our dollars. So, we have a more direct interest than if we're just out there regulating somebody who's operating purely in the private sector. Just as when we're dealing with contractors, we need to figure out mechanisms that we can put in place so that we can ensure the taxpayers' money is well spent, we need to do that here. So, we have a little bit more of an interest than we do when it's a pure regulation in the private sector. Even having said that, you're right, we need to look at ourselves and make sure we're not over-regulating.

Senator SULLIVAN. Thank you.

Thank you, Mr. Chairman.

Chairman MCCAIN. Senator Heinrich.

Senator HEINRICH. Thank you, Chairman.

One thing this committee ought to be able to agree on today is that there have been some abusive and predatory practices occurring against our men and women in the military. And, frankly, one thing that has been common to much of the questioning and testimony today from my colleagues is that whether they are for-profit or nonprofit, online or brick-and-mortar, educational institutions having exploited servicemembers is unacceptable. And we've seen some instances over the last few years where we've had outrageous tuition and fees for bachelor's degrees—60,000, 75,000 dollars—coupled with interest rates as high as 15 percent, as with Corinthian College. And I think those sorts of things ought to be just viewed as, frankly, unacceptable.

But, I also want to go back to this issue of the 90/10 rule. And I have to say I'm a bit flabbergasted that DOD does not have a position on whether the 90/10 loophole should be closed. I understand

DOD is not going to have—is not going to weigh in on elementary education policy, but this specific loophole directly impacts your servicemembers and their livelihoods and their futures. So, Under Secretary Levine, I want to go back to this. Why on earth doesn't DOD have a policy position on this?

Mr. LEVINE. Senator, what I'd say is, I'm part of an administration, and we don't take positions on legislation without coordinating through our legislation—through the administration. So, while what you're—what you and others have said about the 90/10 rule sounds reasonable to me, I'm just not in a position to say we approve of the legislation or we disapprove of legislation without going through a proper process within the administration.

Senator HEINRICH. Well, I would respectfully suggest going through that process.

Mr. LEVINE. Yes, sir.

Senator HEINRICH. Ms. Barna, one of the things that Under Secretary Levine talked about was how the current system is sort of—it's driven by complaints from individual servicemembers, and that can be unwieldy. Can you talk a little bit about how there is this transition in place or in process moving from a servicemember complaint-based system to a risk-based compliance model designed to go into effect in 2017, and what that means, and how that might better detect and prevent, ahead of time, predatory actions against our servicemembers?

Ms. BARN. Yes, Senator, thank you for the opportunity to talk about our third-party compliance system that we will be initiating in January of 2017. We will be using industry-based best practices, both to routinely inspect on a very transparent basis, based on very transparent criteria, many of our schools. And then we will also have spot-checks or risk-based assessments that will go on, in addition to these more routine inspections.

Right now, based solely on servicemember complaints, based on complaints that we receive through the media, from others, we're able to address about 1 percent of our schools. We believe that our new third-party complaint compliance system will enable us to address 10 percent of our schools annually, and to do so on a much more fair, equitable, and in a much more transparent manner.

Senator HEINRICH. Well, I think everyone up here looks forward to seeing that, and hopefully it will meet the promise that you've sort of laid out.

Going back to you, Under Secretary Levine, I want to just touch on something you brought up briefly about for-profit colleges that have gone out of businesses, and then we have Active Duty members who are left in the lurch. What policies does DOD have in place for members of the military when for-profit institutions go bankrupt? And are there any measures for recourse for those servicemembers when, halfway through a program, they—their institution is no longer in existence?

Mr. LEVINE. I'm going to defer to Ms. Barna on that.

Senator HEINRICH. That would be fine.

Ms. BARN. Sir, this is where we really rely on our educational counselors and educational advisors. Each servicemember, prior to receiving tuition assistance, is required to engage in some upfront planning to develop an educational plan, educational goals and ob-

jectives. And when we have a situation in which a school goes out of business, that's when our counselors really get to work, working with those individual servicemembers, trying to find them other educational options, perhaps also through online schools, but that will also meet the terms of their educational plan. So, these are cases in which we give our servicemembers direct and very personal assistance to try to find a way to continue their education without interruption.

Senator HEINRICH. Mr. Chairman, I believe my time's expired. Thank you very much.

Chairman MCCAIN. Before I turn to Senator Cruz, I appreciate all the comments and the corrections that need to be made. This hearing is about the gross and grave injustice that was committed on an educational institution, that harmed the economy, their ability to teach people, their ability to provide an education for veterans. And it was done by a GS-15, apparently, and no one else, that have done terrific and horrific and unacceptable damage. Even Mr. Levine has pointed out that this was a lousy process. And there were repeated attempts by this University to sit down and discuss and resolve issues such—so serious as a Challenge Coin or a patriotic event. And so, I don't want this committee to lose sight of what—the reason why I called this hearing is because this kind of abuse of power is something that I hope, in a new administration, will be totally unacceptable.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

Good morning. Thank you, to each of the witnesses, for being here this morning.

Voluntary education programs serve as an important role in developing America's servicemembers while in uniform, and setting them up for success following a military career. In my home state of Texas, thousands of soldiers and sailors and airmen and marines utilize these key benefits across all 15 of our military installations. Those who wish to develop and further develop themselves personally and professionally should be afforded the opportunity to do so with the education benefits that they were promised by the Government. The Tuition Assistance Program is far too important to lack accountability and oversight within the Department of Defense. It is of utmost importance that we ensure that our men and women that serve have as many higher education opportunities as possible, whether they are offered by for-profit institutions or private or public nonprofit institutions.

I guess the most important question that I would ask the witnesses here is a very simple one. What went wrong here? What happened that led to this decision being made in what appears, I think, to most, if not all, observers, in a rash and ill-considered manner?

Mr. LEVINE. So, Senator, first of all, I didn't hear anything in your description of the program that I disagree with. I would affirm what you said about our responsibility to soldiers and the utility of this program. I think it's a vitally important program, and I think you described it accurately.

In terms of what happened here, I divide it into two categories, one of which I—on one of which I agree with Senator McCain and

on one of which I disagree with the Chairman, just to be honest about it.

Senator CRUZ. The latter is always perilous in this committee.

[Laughter.]

Mr. LEVINE. It is, and I understand that, sir.

[Laughter.]

Mr. LEVINE. I believe that there were some substantive violations on the part of the University of Phoenix, which Ms. Barna and Ms. Bilodeau were reacting to in good faith when they put the institution on probation. However, what—and in answer to your question, What went wrong?—I think that the process was, as I put it, “crappy,” as Senator Levin—as Senator McCain, the Chairman, put it——

Senator CRUZ. Now, is that a technical military term?

[Laughter.]

Mr. LEVINE. That was a technical military error on my behalf, in naming the Chairman, yes, sir.

As—there were—the process was lousy. We did not give University of Phoenix advance notice that they were going to be put on probation, an opportunity to respond, so they were put in a position where they were already on probation and forced to respond in that status rather than being warned and having an opportunity to respond in advance. I don’t believe that’s the way we should treat institutions like that. If it created the damage that Senator McCain caused, that’s on us, and we shouldn’t have done it. So, that’s what went wrong.

Senator CRUZ. Well, let me ask—I mean, aside from the fairness to one particular institution, I mean, what about the over 9,000 current servicemembers in the TA program that have made the decision to attend the University of Phoenix? I mean, what about them? What consideration was given to them? And——

Mr. LEVINE. Ms. Barna has described how we took measures to protect them and ensure that they could continue to get the education, continue to work with University of Phoenix during the time that University was on probation. So, thought was given to that. I don’t think that makes this a fair process. I think we should have given notice, and we should have given an opportunity to comment.

Senator CRUZ. Well, and I guess my point would be, if you’ve got over 9,000 servicemembers that have made the decision that they like what University of Phoenix is offering, and they think it’s beneficial to them, personally, professionally, shouldn’t they be entitled to make that decision? And what about the next servicemembers who might make that decision that were being told, “That option’s not going to be available to you”?

Mr. LEVINE. So, I believe that our servicemembers go into this program because they want to better themselves. They go in for the right reasons. And—but, this is a program where we have 2700 education institutions involved in it. Some of them are better than others. And we, as the Department of Defense, don’t really have good information on which ones are better than others. Some of them appear to have been engaging in inappropriate practices, and it’s—we feel it’s our obligation to protect our students and to pro-

tect the taxpayer from that. We need a better process to do that with, and we're going to work to improve our process.

Senator CRUZ. Well, thank you for your candor, in terms of the mistakes that were made, here. Thank you for being here. And let me suggest some principles, going forward, that may be beneficial. And I would put right at the top of that list protecting freedom of choice of our servicemen and women, that they are in a position to make judgments about what's best for themselves and their careers. And there's certainly a legitimate role in preventing fraud and deception, but there's no—as I understand it, no serious allegations of that. But, short of that, I would just encourage you to protect servicemen and women's freedom of choice.

Mr. LEVINE. Senator, I—and I appreciate that. I think we should. What I would like to be in a better position to do than I am is to provide servicemembers with advice as to quality of institution. We don't have that expertise. We don't have objective benchmarks. And we need to be better—we need to have better information that we can provide our servicemembers to inform the choices that they make. We shouldn't be making choices for them, but the more information, the better information we can provide them, the better off they'll be.

Senator CRUZ. Given the many challenges facing this country on the national security front, I'm not sure it should be a top priority of DOD to become an expert on educational institutions rather than simply entrusting individuals to make those determinations.

Mr. LEVINE. So, Senator, I agree with you, it's not our—as I started out by saying, earlier today, that's not our wheelhouse, we're not the ones to do that. But, it would be helpful to us if those who are in that business would develop systems that would help us provide that information.

Senator CRUZ. Thank you.

Chairman MCCAIN. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

And recognizing your concern about the University of Phoenix, I do think it's important to point out that this hearing has gotten broader issues with respect to how servicemen and women choose continuing education, and that that's a good discussion for this committee to be having.

And I was—as I was looking at the materials that were given to us, I noticed, in the statement from the president of the University of Phoenix, that he talks about his support and the University's support for Executive Order 13607, which, I think, most people who have asked questions on this committee have agreed is a good thing, that we want to ensure that men and women who are serving have access to higher education and are not preyed on by predatory practices. So, I do appreciate the president's comments in support of that executive order.

And I have to say, I agree with Senator Blumenthal, and am a cosponsor of his legislation, that part of the problem here is the loophole, the 90/10 loophole, that encourages colleges, for-profit or not, to be able to benefit from targeting members of the military for additional education, and that we really need to change that and make everybody play by the same rules.

Now, having said that, I want to follow up, Mr. Levine, on your statement about trying to make sure that servicemembers and veterans have the resources that they need to better make choices about educational institutions. And again, I think they should be able to determine where they want to go, as long as the educational institution complies with the requirements. But, it's important to make sure the information is available to them.

So, I wonder—I don't know if this is for you or for Ms. Barna—what currently is being done to provide information to men and women who are serving, so that they can make informed decisions?

Ms. BARNA. Senator, one of the tools on which we rely and on which our servicemembers rely is an online tool called Tuition Assistance Decide, or TA Decide. A servicemember can go online at any time and view all manner of information about a particular academic institution. And all institutions are reflected. There's no distinction at all between for-profit or not-for-profit. Any institution that has signed an MOU is reflected. We pull information from other agencies. We pull graduation rates. We pull student loan rates. Again, all provided by other Federal agencies. But, all of that is available there for the servicemember to view, to sort through, to compare different institutions and find the one that best meets his or her needs. So, that's a tool that we've rolled out in the last 18 months. And we're very gratified by the usage that it's receiving, and believe it's a good first step in better informing our servicemember populations.

Senator SHAHEEN. And is there someone—if somebody looking at that Web site has questions about material that's there or needs further guidance, is there somebody who they can go to? Do you suggest somebody in an institution, or is there somebody on base? My oldest granddaughter has been applying to colleges, and I have watched how overwhelming that process is. So, I think it's overwhelming, no matter what age we are, to get a lot of information and not necessarily be able to translate that in a way that is most effective for our lives.

Mr. LEVINE. So, I believe we have—

Senator SHAHEEN. Sometimes we need help.

Mr. LEVINE.—I believe we have—what, is it 286 education assistance officers distributed around the world and around the Department. I can't tell you that that's any more satisfactory to a student than a high school guidance counselor, but it—but we try.

Senator SHAHEEN. And how do people know about those people? One of the things that I've heard concerns about is not being aware of what information is available. So, what kind of outreach is done to make sure people are aware of that, or try and help them be more aware?

Ms. BARNA. So, ma'am, there are many things that are done to try to publicize the opportunity to consult with an education counselor, to visit the Education Assistance Center. They're usually located right in the heart of the installation garrisons. It's put—information is put out, briefings are put out at unit assemblies. Again, not advocating for or against a particular institution, but encouraging servicemembers who are interested in bettering themselves and in better preparing themselves for the ultimate transition back to civilian life, "Come in to the Education Center, let's

sit down, let's talk about your educational goals and see how we can assist you."

Senator SHAHEEN. Thank you all very much.

Chairman MCCAIN. Senator Kaine.

Senator Kaine. Thank you, Mr. Chair. And, Mr. Chair, I appreciate the comments that you made earlier. You know, we talked a bit about this last week, so I have some unresolved emotions from the campaign, but the one that is very resolved is, this committee has really been the center of my work in the Senate in the 4 years I've been here, and I really have appreciated my relationships with my colleagues, and am glad to be back to take up this important matter. So, I appreciate you and Senator Reed and all my colleagues. And it's good to be back at work.

A couple of items, just to tie—

Chairman MCCAIN. Thank you.

Senator Kaine.—up some loose ends. Because of—a lot of this hearing is about the process of notification, I'm not exactly sure, Mr. Chair, what back-and-forth correspondence is in the record. I think it's important to have the communication between the University of Phoenix and DOD in the record on this hearing.

I wanted to offer the October 7, 2015, letter, which was the Notice of Probation letter, but that wouldn't be sufficient. I'm assuming I can put this in the record, without objection. But, I hope maybe the staffs, together, would work on putting together the communication, beginning in June of probably 2015 all the way through the restoration after the probation period. I think that would be helpful, if we could—

Chairman MCCAIN. Sure.

Senator Kaine.—seek that to happen.

Chairman MCCAIN. Without objection. And the record will be made clear that efforts were made, on the part of the University of Phoenix, which were not received—which were not responded to in an affirmative fashion. And other influences clearly affected this decision, at least in the view of the Chairman. But, I thank you for that, and those communications will be made part of the record.

[The information referred to follows:]

The committee received 164 pages of communications between University of Phoenix (UofP) and the Department of Defense (DOD) through January 15, 2016 (the end of probation) requested at the Committee's hearing of November 29, 2016. This augments the nearly 700 pages of documents previously provided in response to the Committee's request of August 17, 2016. Please note, many UofP communications attached are marked as proprietary and/or confidential. As such, it is recommended the Committee engage UofP before publicly releasing any of these. Though the Department is unaware of any additional communications from June 30, 2015 through January 15, 2016, between DOD and UofP regarding its Memorandum of Understanding, we will provide any additional responsive items if discovered.

[The received communications will be retained in the committees files.]

Senator Kaine. Second, just to clarify a factual point, the testimony of the witnesses were that four institutions have been put on probation. I think the testimony was that the University of Phoenix and Heald College are both for-profits, the other two were Globe University and the Minneapolis—Minnesota Business College. I checked both of those. They're both for-profits, as well. So—based

on their own Web site information—so, the four that have been put on probation are all for-profits.

I don't necessarily think that demonstrates a double standard. I mean, they're—this committee has shown concern in the past about for-profit institutions and whether servicemen and women, folks in Active Duty, are, you know, singled out even for deceptive treatment by them. I think the committee, for example, has adopted a Federal rule that limits interest rates on payday loans to Active Duty, that that is not a rule that applies to other American citizens, but it does apply to Active Duty military because of a concern that payday lenders were singularly focusing attention upon Active Duty military members. But, it is important to notice that the four institutions that have been put on probation are all for-profit institutions. And you can draw the conclusions that you want about that.

Your opening testimony, Mr. Levine, "This is not in our wheelhouse," you know, that really has struck me during the course of this hearing. You know, and I've wondered if you just took the entire amount we spend on this and just gave everybody a raise and said, you know, "You can decide what education that you want to access if you do want to," whether that would be a better way to do that than to have a tuition assistance benefit program and then have the DOD—and it's not in the DOD's wheelhouse—try to determine what institutions can receive those funds.

I'm going to give you a pet peeve of mine, and tell me if I'm wrong. Maybe it's been corrected. In Virginia, ordnance officers and ordnance specialists are trained at Fort Lee, which has a huge ordnance—I'm sorry—logistical specialists of all kinds—chefs, ordnance officers, heavy equipment operators. There is an ordnance school there. And I'm told, by members who go through the ordnance school, that they take metalworking and welding training, and yet the Military Tuition Assistance Benefit Program, as it currently exists—and I just looked at TA Decides, based on your testimony, Ms. Barna—would allow you to get tuition assistance to use at 2700 universities, but you couldn't get \$300 to pass the American Welding Society certification exam out of a tuition assistance program. You could get 4,000, 5,000, thousands of dollars to go to a private, a public, or a for-profit college, but you couldn't get 300 bucks to pass the American Welding Society's certification exam, which, in terms of producing an outcome in the civilian workforce, a credential that would enable you to be hired almost immediately, would probably be preferable than virtually any other degree that you could get. We have been working to try to resolve that second-class treatment for career and technical education for some time. But, it—the gatekeeping function of an organization that acknowledges "This is not our wheelhouse" trying to decide what is a good educational program and what isn't, it seems to me that you can work awful hard on that, but it's still not going to be in your wheelhouse, and there will still be overinclusion of institutions that possibly shouldn't be included, and then underinclusion of institutions or training programs that should. And that's been an aspect of this hearing that I think has been really helpful. It's raised the question of what really is the DOD's expertise in this area. And I wonder if you have any comments about that.

Mr. LEVINE. Well, it's an interesting problem that you pose there, Senator. We rely on institutions being accredited educational institutions. If we go beyond that, then the question is, What is our minimum baseline that we're going to go to? Because that's one of the few things we have to measure against.

With regard to certificates, that's something that we are specifically concerned about, and we're working toward enabling servicemembers to get certificates. We're doing that through other programs. And so, it may be that the best answer to enable people to take the—to get the kind of training you're talking about without lowering our standards for the Tuition Assistance Program is to develop—an approach that is specifically tailored to that kind of certificate so that it doesn't mix apples and oranges and undermine both programs.

Senator KAINE. Can I just make one last point, Mr. Chair?

The—you used the word “lowering our standards,” and I just want to underline that and put a big spotlight on it. In Virginia, there is a marvelous career and technical program that trains shipbuilders at the shipyard in Newport News. It's been in existence since 1919. Individuals who go to that program, they get paid to go. They don't accumulate debt. They graduate in 3 years, and they move into a job that is well paid, doing something really patriotic for the country. But, we do not count them as having a higher education degree. The admission rate into the program is lower than getting into Harvard, but we do not count them as having a higher education degree.

There has been, across Federal policy in the DOD and DOE [Department of Energy], a sense that career and technical education is a lowered standard, is a—some kind of a subjugated or second-class kind of education. And you can look at the way Pell Grants are administered or the way the military tuition assistance benefit is administered, and you'll see that notion, that career and technical training is second class. And yet, we have to bring in welders from foreign countries on specialty visas because we don't train enough in the country, and the living that they make is vastly better than what a lot of college graduates make.

You know, this is a hearing about a very particular thing, and we'll fill the record up with the communication about the process and how it can be made better, but it also touches upon something much larger, which is, What is the definition of a first-class education or an accredited or approved education program? And the fact that we don't recognize technical certifications that will enable you to get a job anywhere in the United States as being of a high standard, but we pay thousands and thousands of dollars of public money for people to get degrees that, in some instances, may not be that helpful, in terms of either their military MOS [Military Occupational Specialty] or their post-military career, is just an example of the amount of reform that I think needs to—

Mr. LEVINE. And, Senator, you're right. I certainly shouldn't have implied that those career and technical programs you're referring to are, in some way, worse or less important than the more traditional education programs. What I meant to say was, if we were to remove the accreditation requirement, then we would have to worry about what the other impacts of that might be.

Chairman MCCAIN. I want to thank the witnesses for appearing. And I know it is unusual for Ms. Barna and Ms. Bilodeau to be before this committee, but it's also the first time that I have seen decisions of this magnitude made at the level that they testified was their decision making which had such profound impact.

Mr. Levine, I'd—you're an old friend of this committee. I thank you for your candor. I thank you for your continued service. And, believe it or not, from time to time, we miss you.

[Laughter.]

Mr. LEVINE. Thank you, Mr. Chairman.

Chairman MCCAIN. This hearing is adjourned.

[Whereupon, at 11:29 a.m., the hearing was adjourned.]

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR KELLY AYOTTE

TRANSPARENCY FOR SERVICE MEMBERS

Senator AYOTTE. Secretary Levine, in your joint statement, you state that, "Consistent with the *Principles of Excellence*, the revised [memorandum of understanding] requires educational institutions to provide meaningful information about the financial cost and quality of their programs so that military students can make informed decisions about where to attend school."

1. In addition to simply gathering this information, how is DOD proactively ensuring that this information is available to service members considering whether to enroll in courses at a particular school?

Secretary LEVINE. Although the requirement to provide meaningful information about cost and quality rests with the Educational Institution (EI) in accordance with both the Principles of Excellence and the Department of Defense (DOD) voluntary education policies and agreements, DOD is actively engaged in ensuring such information is readily available to Service members who may be considering how to employ education benefits, such as Tuition Assistance (TA).

To this end, DOD has developed two tools that help Service members review and explore much of the required information. A tool called TA DECIDE contains cost data, program offerings, enrollment numbers, student complaint data, and many other relevant data so that military students can review and make side-by-side comparisons of EI offerings as better informed consumers of higher education. TA DECIDE is publically available at: <https://www.dodmou.com/TADECIDE/>. Another tool, an interactive instructional course called "Higher Education Preparation," helps Service members to make sense of the information that EIs present. The course is available on-demand through Joint Knowledge Online, and Service components may require a Service member to complete this course prior to receiving TA funding.

Most importantly, the Department's employs an extensive force of professional education counselors who are trained and available to help Service members use these exceptional tools to explore educational choices that meet their individual needs. These tools, when considered together, enable a Service member to review and better understand information communicated by the EI, while at the same time enabling DOD to promote EI compliance with the Principles of Excellence.

LOW RATE OF DEGREE OR CERTIFICATE COMPLETION

Senator AYOTTE. Secretary Levine, in your joint statement, you express concern regarding the "relatively low rate of successful completion with degrees or certificates . . ."

2. For service members utilizing tuition assistance, what is the rate of successful completion with degrees or certificates? How do these rates vary based on rank and time in service?

Secretary LEVINE. The Department tracks Tuition Assistance (TA) funded completions that include certificates, as well as associate, bachelor, and master's degrees. The table below provides participation and completion information for fiscal years 2014 and 2015. fiscal year 2016 data is not yet available. It is important to note that the "Completion Ratio" column is simply the ratio of credentials reported by the educational institution as compared to TA participants for the given fiscal year, and not an actual cohort value reflective of the rate of completion.

While Educational Institutions are required to report degree and certificate completions in accordance with Department voluntary education policies, aggregate completion information is not currently available by grade or time in service. However, the Department is proactively engaged in numerous efforts to improve the integrity, collection, storage, and reporting of TA program data across the voluntary education enterprise in the coming years. In early 2017, the Department will provide a report to Congress on tracking student outcomes for TA participants, which report will highlight some of these efforts.

Fiscal Year	Number of TA Participants	Degrees/Certificates Reported*	Completion Ratio**
2014	294,200	46,166	15.69%
2015	285,763	49,288	17.25%

*A record of the degrees or certificates reported by an Educational Institution as complete during the fiscal year.

**The ratio of degrees/certificates reported to the number of TA participants during the fiscal year.

3. Senator AYOTTE. What is DOD doing to help a greater percentage of service members to complete their degree and certificate programs?

Secretary LEVINE. The Department sponsors numerous efforts to assist Service members, and improve the likelihood that they achieve their degree or certificate completion goals. Chief among these efforts is a robust counseling program that helps Service members articulate educational goals, assess their readiness for academic engagement, and formulate a far-reaching plan for goal attainment and degree or certificate completion. Further, DOD policies require that Service members have a degree plan in place; TA funds can only be used for courses leading toward completion of that degree plan. The degree plan provides a roadmap for Service members to “check off” milestones toward credential attainment, avoid enrollment in unnecessary classes, and track successes.

It is important to note that the Department of Defense (DOD) Tuition Assistance (TA) program was designed to support the *off-duty* education needs of Service members. As such, its goals, usage, processes, and outcomes are inherently different from programs used by civilian peers. Further, the demands of military service limit the amount of time that Service members can devote to off-duty education. For example, DOD’s average program participant takes just three courses per year, and fewer than 5% take six or more classes in an entire year. Moreover, coursework is often accomplished in “bursts” wherein Service members take a semester or two of courses followed by a semester or more of time away from academics.

Because of these exigencies, many Service members fulfill their enlistments and transition out of uniformed service before completing a degree or certificate. Thus, acquiring a degree or certificate often takes much more cumulative time than a Service member has available while on active duty.

In response to these endemic constraints, DOD has devoted an entire focus area of our Voluntary Education Strategic Plan to student readiness and success. In the public sector, credential completion and persistence are often cited as key success metrics, whereas such measures may not represent key performance indicators for our military students using TA. For example, completing an associate’s degree during off-duty time in a part-time capacity may take up to seven years for Service members using TA, compared to a two year completion rate for the traditional, full-time student. Further “persistence,” often defined as continued enrollment from one academic term or semester to the next, presents a unique challenge for our highly mobile and deployable force. Service members tend to enroll in coursework between deployments and as life circumstances allow.

Course completion rates provide an alternate indicator of success. Course completions can be compared against a Service member’s individualized degree plan as an accurate measure of satisfactory progress toward program completion. The DOD and the Service components actively monitor course completion rates, which consistently register above 90 percent.

THE POSTSECONDARY EDUCATION COMPLAINT SYSTEM (PECS)

Senator AYOTTE. Secretary Levine, in your joint statement, you discuss the Post-secondary Education Complaint System (PECS). As you note, this system provides service members a means to report negative experiences with educational institutions so that we can help service members, improve the education they receive, and identify bad actors.

4. For every service member enrolling in post-secondary courses and utilizing tuition assistance, does DOD currently have a systematic method of notifying them

that this complaint system exists, informing them how to use it, and encouraging them to do so if they encounter problems?

Secretary LEVINE. The Department does not notify and inform every Service member of the Postsecondary Education Complaint System (PECS) during the Tuition Assistance (TA) enrollment process. However, the DOD does appropriately promote the availability and utility of PECS in the standard course of its voluntary education operations.

The PECS landing page, available at: <http://www.militaryonesource.mil/education-and-employment/higher-education-for-service-members?content—id=287986>, provides Service members with detailed information about how to submit a complaint, examples of Principles of Excellence complaint types, and the ability to submit a complaint. Information about PECS and links to the PECS landing page are promoted and accessible across the voluntary education enterprise through Departmental and Service component websites, including Service component systems that support TA registration and management. Further, PECS information and links are available through all phases of the enrollment process, including pre-enrollment, during enrollment, and post enrollment.

Additionally, Service members are introduced to PECS during the Department's "Higher Education Preparation" interactive instructional course, which helps Service members to navigate higher education information that equips them with the details they need to make school and program choices that meet their individual education and career goals. The course is available on-demand through Joint Knowledge Online and Service components may require Service members to complete this course prior to receiving TA funding.

Should a Service member want to report a negative experience with an educational institution and not be able to locate the aforementioned resources and links on his or her own, the Department's professional education counselors are trained and available to assist them. These counselors can, and often do, help Service members locate the PECS landing page and walk them through the process of initiating a complaint.

5. Senator AYOTTE. Do the forms that a service member fills out to apply for tuition assistance include a section informing them about this complaint system that they could utilize?

Secretary LEVINE. The Military Departments are responsible for administering the Tuition Assistance (TA) program, commensurate with all governing Federal statutes and rules, guidelines, policies, and regulations of the Department of Defense (DOD). Accordingly, the DOD has not prescribed a uniform set of application forms for the Military Departments to utilize for TA applications. But several of the Services do include appropriate information about the Postsecondary Education Complaint System (PECS) on their respective TA applications and forms. The Services also introduce information about PECS availability through their counseling support systems and materials and/or through their TA application systems and processes. In response to your question, the Department will suggest to the Military Departments that appropriate information about the PECS be included on their appropriate forms.

DOD's response to Question #4 provides additional insight into PECS's information processes.

6. Senator AYOTTE. Can a service member considering whether to enroll at a certain educational institution view the complaints from current students at the respective institution and how the institution has addressed the complaint?

Secretary LEVINE. No. Through the Department's Tuition Assistance (TA) DECIDE tool available at: <https://www.dodmou.com/TADECIDE/>, a Service member can review relevant educational institution data, including the number of student complaints, by category of complaint, for both the TA program and the Department of Veterans Affairs-administered GI Bill. This approach is consistent with the tenets of the Principles of Excellence and complaint information made available by other federal agencies such as the Department of Veterans Affairs. Further, the Department published a PECS summary report for fiscal years 2014 and 2015 that can be accessed at <http://www.militaryonesource.mil/education-and-employment/higher-education-for-service-members?content—id=287986>. Since PECS information is for official use only and protected in accordance with the Privacy Act, and Department Directives 5400.11 and 5400.11-R, a Service member does not have access to view either the specific details of complaints from current students or any response to such complaints provided by the educational institution.

QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN

EQUAL TREATMENT FOR UNIVERSITIES

7. Senator MANCHIN. Is the Defense Department (DOD) treating equally all universities that have signed DOD's MOU? Please answer yes or no to each item, and explain each of your answers: a. In CONUS, has DOD allowed schools that teach a class on base to: meet with any student who is not taking a class with them, including their own online students if they have them, stay on base even when classes are not in session, and usually for 40 hours a week, and/or recruit students in either their on-ground and/or online programs while they are on base? b. OCONUS, has DOD: totally denied all schools base access to their students and any new students, except for four contract schools, granted base access to these four schools with the stated purpose that on-site counselors are needed, and/or required all new TA students to take courses from only these four schools?

Secretary LEVINE and Ms. BARNA. The Department of Defense (DOD) treats all educational institutions that have signed the DOD Voluntary Education Partnership Memorandum of Understanding (MOU) in a fair and equitable manner, consistent with the terms of the MOU. The requirements of DOD Instruction 1322.25, "Voluntary Education Programs," intentionally increased protections for Service members and their families through an enhanced memorandum of understanding (MOU) with educational institutions. The initiative, part of DOD's implementation of the President's Executive Order 13607, "Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members," Principles of Excellence, was designed to improve oversight of the educational programs offered to our Service members and their families, including DOD's Tuition Assistance Program. Specifically, Executive Order 13607 instructed the Department to prevent abusive and deceptive recruiting practices and establish new uniform rules and strengthen existing procedures for access to military installations by education institutions.

The Department is committed to providing appropriate and adequate access to military installations for the more than 2,700 educational institutions that have signed the MOU with DOD. However, DOD must also balance the capacity of the installation commander to accommodate requests within the context of the mission and the particular needs of the installation's population. Equally important, DOD continues to be concerned by the past practices of some educational institutions that used every installation access as an opportunity to recruit. While the educational institution may have been granted access for the purpose of advising students, the institution may also have engaged in unapproved advertising, marketing, and/or recruitment activities during the visit. Common examples include placement of unauthorized banners and signage, mass emails in advance of the visit, and same-day enrollments of new students resulting from visits that were authorized solely for the purpose of counseling existing students.

a) No. Regardless of whether the military installation is located CONUS or OCONUS, the Department enters into installation-level agreements with educational institutions for the delivery of academic programs and services. Such agreements usually contain provisions for office space to staff and conduct operations consistent with the agreement. All educational institutions with a signed DOD Voluntary Education Partnership MOU are eligible to compete for these agreements. The selection of academic programs and services is based on an Installation Needs Assessment process, whereby local program needs are determined and an acquisition-like process ensues to determine vendor interest, solicit proposals, and select vendors. Educational institutions with installation-level agreements are allowed to conduct business in accordance with the terms of the agreement at locations/spaces prescribed. In the scenario provided in your question, an educational institution with an agreement to deliver classroom instruction on the installation would typically have assigned office space. The educational institution may meet with prospective students referred by education center staff, provide counseling to current students regardless of preferred delivery mode (online, classroom, or hybrid), and conduct office operations outside of instructional delivery and consistent with typical business hours of the installation. However, an installation-level agreement for academic programs and services would not permit educational institutions to engage in recruiting or advertising activities inconsistent with DODI 1322.25. All educational institutions, including those with an installation-level agreement, must request and receive approval to participate in recruiting and advertising activities (i.e., education or career fair) on the military installation.

b) Yes. The overseas environment presents unique challenges in terms of country clearances, Status of Forces Agreements/international agreement with the host na-

tion(s), and the authority to operate on military bases, facilities, and areas that the host country has granted to the US military to use. Accordingly, DOD instructions 1322.29 and 1322.19, “Voluntary Education Programs in Overseas Areas,” permit only contracted educational institutions access to overseas DOD installations (i.e., contracts cover Pacific, Europe and Contingency areas of operation). As stated previously, the acquisition of academic programs and services is based on a needs assessment and all educational institutions with a signed DOD Voluntary Education Partnership MOU are eligible to compete for these agreements. Currently, the Department has four contracted educational institutions supporting the Pacific Command, four contracted educational institutions supporting the European Command, and three contracted educational institutions supporting areas of responsibility in the Central Command and the Africa Command. In accordance with the provisions of the aforementioned policies and agreements, new Tuition Assistance participants are referred to one of the contracted educational institutions; recruiting, marketing, and advertising activities by the contracted educational institutions are restricted. Although physical access to overseas installations is permitted only by contracted educational institutions in accordance with the provisions of DOD policies and agreements, educational institutions may still “access” their students through a variety of means (telecommunications, in-person off the installation, virtual counseling, etc.).

TUITION ASSISTANCE BENEFITS

8. Senator MANCHIN. Is DOD finding that there are fewer service members using their earned TA benefits to get an education that would have allowed them to advance themselves while in the military and prepare for a more successful future? In your explanation, please provide the number of TA participants in each of the last 5 fiscal years (fiscal year 2016–fiscal year 2012), and the percentage change year over year.

Secretary LEVINE and Ms. BARNA. The table below provides five years of Tuition Assistance (TA) participation information for fiscal years 2011–2015. fiscal year 2016 data is not yet available. The Department is aware of a slow decline in the number TA participants over the last several years; we believe that this decline may be explained by several contributing factors. First, the Principles of Excellence prescribed in 2012 prompted the Department of Defense (DOD) to take a hard look at our data streams and collection processes. In that review, DOD found a number of opportunities to improve data definitions and standardize data formats. Thus, data integrity and reporting have improved significantly, with fiscal year 2014 and 2015 reports offering a much more accurate accounting of unique participants in the TA program.

Additionally, the restructure of the force itself has likely impacted the number of TA participants. Force drawdowns may have affected the number of Service members who might participate in the TA program. Factors such as increased operational tempo, shortened but more frequent deployment cycles, and earlier focus on transition, may have also detracted from the pursuit of higher education endeavors during off-duty time. Further, the frequency of large, news-worthy events such as troop withdrawals/surges, budget battles, and government shutdowns may produce a “wait and see” effect on Service member willingness to initiate higher education during periods of uncertainty.

Finally, DOD has revised its TA policies to better meet the needs of the DOD while retaining Service member access to quality educational opportunities. Each Military Department manages its TA program under a set of controls that has undergone revision as the Military Departments strive to maximize the balance between efficiency and effectiveness. For example, the Military Departments have promoted policies that enable a more capable force by requiring a Service member to learn his or her military occupation during the first part of enlistment, and before allowing the use of TA funds. Thus, it is important to note that the “Percent Change From Prior Year” column in the below chart does not consider the number of Service members eligible for TA as a proportion of TA participants.

Fiscal Year	Number of TA Participants	Percent Change From Prior Year*
2011	347,656	N/A
2012	360,175	+3.60%
2013	332,997	-7.55%
2014	294,200	-11.65%
2015	285,763	-2.87%

*The percent change from the prior fiscal year does not consider the number of Service members eligible for TA as a proportion of TA participants.

